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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 29

No. 642 28

SUPERIOR OIL COMPANY, APPELLANT,

vs.

THE STATE OF MISSISSIPPI EX REL. RUSH H. KNOX, ATTORNEY GENERAL

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FILED JANUARY 21, 1929

(33,951)

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SUPREME COURT OF THE UNITED STATES

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[fol. 3]

IN CHANCERY COURT OF HARRISON COUNTY

THE STATE OF MISSISSIPPI ex Rel. RUSH H. KNOX, Attorney General,

vs.

THE SUPERIOR OIL COMPANY

PETITION FOR INJUNCTION

Now comes Rush H. Knox, the duly elected, qualified and acting Attorney General of and for the State of Mississippi and respectfully shows to the Court that the Superior Oil Company is a corporation chartered under the laws of the State of Mississippi and domiciled at Biloxi, Harrison County, Mississippi.

Relator further shows to the Court that said Superior Oil Company is now and has for a long time prior to the filing of this petition been a distributor and a retail dealer in gasoline in Harrison County, Mississippi, and that as such distributor it has been engaged in the sale of gasoline to retail dealers in the State of Mississippi, and as a retailer of gasoline it has been engaged in the sale of gasoline in broken quantities at its places of business in the said State of Mississippi, and that as such distributor it has sold and distributed to various retail dealers large quantities of gasoline, and that as a retail dealer of gasoline it has sold large quantities of gasoline in the State of Mississippi in broken quantities as shown by the statement hereto attached, marked Exhibit "A" and made a part hereof.

Relator further shows to the court that on the first day of November, 1927, and for a long time prior thereto, defendant was and continuously since that time has been engaged in business as a distributor and as a retail dealer of [fol. 4] gasoline in the State of Mississippi, and that as such distributor and retail dealer it was, by the provisions of Chapter 116 of the Laws of 1922, required to report on or before the 20th day of each month to the Auditor of Pub-

lic Accounts all sales of gasoline made within the State, and as a distributor of gasoline and as a retail dealer thereof, it was required to render to the Auditor of Public Accounts on forms prescribed by said Auditor a true and correct statement of all gasoline sold by said retail dealer during the preceding month, liable for the excise tax required to be paid, and to show on said statement the total number of gallons of gasoline sold by it and the name of the distributor or distributors from whom the gasoline was purchased and to show by such statement the amount of gasoline sold by the retailer, if any, on which the excise tax was paid by the distributor, and to pay to the auditor of Public Accounts at the time of the making of the report or statement an amount equal to the excise tax required by law upon all such gasoline sold by it on which the tax was not previously paid by the distributor from whom the gasoline was purchased or obtained, and as a distributor of gasoline it was required, if by the terms of the sale of gasoline by the distributor or wholesaler to the retailer the excise tax required by law upon gasoline was to be paid by the distributor to deliver to the retailer upon the delivery of such gasoline a statement in writing showing the name of the retailer, the date of the sale or delivery, the number of gallons delivered, and agreeing thereby to pay the amount of the excise tax thereon, which statement was required to be signed by the distributor or his agent in charge of said business, and thereupon the distributor became liable and was bound to pay such excise tax, said statements to be sworn to by the distributor or retail dealer before some officer authorized to administer oaths.

[fol. 5] Relator further shows to the Court that by Chapter 115 of the Laws of 1924, the said defendant as a distributor of gasoline and as a retail dealer thereof was required to pay for the privilege of engaging in such business an excise tax of three cents per gallon upon the sale of all gasoline in this State wherein said tax was not paid by the retail dealer as provided by law, and was required to pay said tax as a retail dealer upon the sale, of all gasoline in the State wherein said tax was not to be paid by the distributor as provided by law, said tax of three cents per gallon to be paid upon all gasoline sold pr-or to the first day of April, 1926.

Relator further shows to the Court that the said Superior Oil Company did make and file with the Auditor of Public Accounts a statement showing the total number of gallons of gasoline sold by it as distributor and as a retail dealer in gasoline, said statement showing that the said defendant sold within the State of Mississippi in the regular course of business prior to the first day of April, 1926, and after the 25th day of March 1922 300,758 gallons of gasoline, but defendant did not report any of said gasoline sold to a retail dealer to be re-sold on which the tax was to be paid by the retail dealer; that on said amount of gasoline sold by said defendant in the due course of business to the consumer or consumers and retail dealers there was due to have been paid to the State of Mississippi by the defendant herein an excise tax of $9,022.74, for which amount the said defendant became indebted to the State of Mississippi; that of said amount the said defendant paid to the State of Mississippi the sum of $6,002.52, leaving a balance due by it of $3,020.22, and although frequent demands have been made on said defendant for the payment thereof, no part thereof than as above set out has been paid by said defendant or anyone else, and because of the failure of said defendant to pay said [fol. 6] sum when due, no — else being liable therefor, the said defendant became and is liable for a penalty of five per cent of the amount due, amounting to $151.01, and six per cent interest per annum from date said payment should have been made as provided by law, making a total amount due from January 1st, 1926, until November 1st, 1927, on account of sales as above set out, all of which were made in the State of Mississippi, of $3,412.00, for which sum plaintiff, demands judgment against defendant.

Relator further shows to the Court that the said defendant was on the 1st day of April, 1926, and has been continuously since that time engaged in the business of distributor and retail dealer of gasoline within the State of Missisippi, and as such distributor and retailer under and by virtue of the provisions of Chaper 119 of the Laws of 1926, became liable to the State of Mississippi in the sum of Four cents per gallon upon each and every gallon of gasoline sold by said distributor or retail dealer within the State of Mississippi in due course of business, which was not sold to retail dealers or other persons required by

law to pay said excise tax of four cents per gallon for the privilege of engaging in the business of distributor or retail dealer of gasoline, and that as such distributor and retail dealer of gasoline, the said defendant was required to report to the Auditor of Public Accounts all sales of gasoline upon which the said excise tax was due to be paid, and to pay thereon for the privilege of engaging in the business of distributor and retailer dealer of gasoline the sum of four cents per gallon on each and every gallon of gasoline sold in the State of Mississippi which was sold to a retail dealer who was required by law to pay said excise tax as provided in Chapter 119 of the Laws of 1926, Chapter 115 of the Laws of 1924 and Chapter 116 of the Laws of 1922.

The relator further shows to the court that from the first [fol. 7] day of April, 1926, to the first day of October, 1927, there was sold by said defendant within the State of Mississippi, 2,391,212 gallons of gasoline, which was sold in the regular course of business and was not sold to a retail dealer or other person liable to pay said tax, and that because of the sale thereof the said defendant became indebted to the State of Mississippi in the sum of $95,648.48, and paid to the State of Mississippi thereon the sum of $73,096.30 leaving a balance due of $22,552.18, and that although frequent demands have been made on the said defendant for the payment thereof, no part thereof has been paid by the said defendant or any other person or corporation, and that no other person, corporation or association is liable for said tax, and because of the failure and refusal of said defendant to pay said sums when due, the said defendant became and is liable for a penalty of five per cent of the total amount now due, amounting to $1,127.60 and six per cent interest per annum thereon from the date said payments should have been made as provided by law, making a total amount to the first day of November, 1927 of $24,784.28 with legal interest thereon from the 1st day of November, 1927 until paid.

Relator further shows to the court that the said defendant is continuing to carry on the business of retailing gasoline as a distributor and as a retail dealer of gasoline in the County of Harrison, State of Mississippi, without paying the full amount of the excise tax required by law, and

thereby the State of Mississippi has been and is now and will continue to be defrauded out of large sums of money unless the said defendant The Superior Oil Company, its agents, servants and employees be restrained by this Honorable Court from further distributing or selling gasoline, the sale of which is taxable in the State of Mississippi, until it shall have paid the excise tax, damages and interest now due, and has otherwise fully complied with the law pertain-
[fol. 8] ing to the sale and distribution of gasoline in the State of Mississippi. Relator is informed and believes that the said defendant is insolvent and that it has not sufficient available assets to satisfy its indebtedness.

Therefore, the prayer of your relator is that all proper process of this Court issue restraining and enjoining the said Superior Oil Company, its agents, employees and servants from further selling or distributing gasoline, the sale of which is taxable in the State of Mississippi, until it shall have paid the excise tax, damages and interest now due, and has otherwise fully complied with the law pertaining to the sale of gasoline in the State of Mississippi.

Relator further prays that upon a final hearing of this cause that a decree be entered against the Superior Oil Company in the sum of $28,196.28 with six per cent interest thereon from the 1st day of November, 1927, until paid, and for such other, further and more general relief as to the Court may seem just and proper, and in duty bound he will ever pray, etc.

Rush H. Knox, Attorney General, by E. C. Sharp, Attorney for Plaintiff.

Duly sworn to by Rush H. Knox. Jurat omitted in printing.

[fol. 9] In Chancery Court of Harrison County

[Title omitted]

Answer—Filed Jan. 16, 1928

Now comes the Defendant and for answer to the Bill of Complaint exhibited against it or to such parts thereof as

it is advised it is necessary and proper to answer, answering says:

Defendant admits that Rush H. Knox is the duly elected and qualified Attorney General of the State of Mississippi, and that the Superior Oil Company is a corporation organized under the laws of the State of Mississippi, domiciled at Biloxi, Harrison County, Mississippi.

Defendant admits that it is now, and has been for a long time prior to the filing of the bill of complaint, a distributor as well as a retail dealer in gasoline in Harrison County Mississippi, and that as such distributor it is engaged in the sale of gasoline to retail dealers in the State of Mississippi, and is a retailer of gasoline, but denies that it sold the gasoline specifically described in the exhibit to the bill of complaint marked "A" within the State of Mississippi and subject to the said excise tax.

Defendant further admits that on the 1st day of November, 1927, and for a long time prior thereto, defendant was and continuously since that time has been engaged in the business as a distributor and as a retail dealer of gasoline in the State of Mississippi, but denies that as such distributor and retail dealer it was by the provisions of Chap- [fol. 10] ter 116 of the Laws of 1922 required to report on or before the 20th day of each month to the Auditor of Public Accounts for all sales of gasoline made within the State, or that as a distributor of gasoline and retail dealer thereof it was required to render to the Auditor of Public Accounts on forms prescribed by such Auditor a true and correct statement of all gasoline sold by such retail dealer during the preceding month liable to the excise tax to be paid and to *to* show on such statement of the total number of gallons of gasoline sold by it and the name of the distributor or distributors by whom such gasoline was purchased, or that it was in any wise required to make the statement set out by the complainant in the bill of complaint.

Defendant denies that it was a distributor or retail dealer in gasoline required to pay for the privilege of engaging in said business an excise tax of three cents per gallon upon the sales of all gasoline in this State as alleged by the complainant in the bill of complaint.

Further answering said bill of complaint, defendant admits that the Superior Oil Company made and filed certain

statements with the Auditor of Public Acounts, and asserts the statement made therein are true, but not knowing what statement is referred to by the complainant in the bill of complaint and not being able to understand from the loose manner in which this paragraph of the bill of complaint is written exactly what the complainant is referring to denies any liability for tax due thereon.

Defendant denies that it made the statements set out in the bill of complaint or that it made any statement admitting the sale of any gasoline on which there was a tax due without having paid in the manner provided by law all taxes that was due upon gasoline reported by it as having been sold in the State of Mississippi and on which there was a tax due.

[fol. 11] Defendant further denies that because of any failure of it to pay any sum by it as charged by the bill of complaint that it became liable for $151.01 as set out in the bill of complaint, or for the sum of $3,020.22, or any sum whatsoever. And further answering said paragraph, defendant denies that it is indebted to the State of Mississippi for any sum whatwoever, specially denying it was indebted in the amount and manner set out in the paragraph herein answered.

Defendant admits that on the 1st day of April, 1926, and since said time, it has been engaged as a distributor and retail dealer of gasoline in the State of Mississippi, but denies that as such under and by virtue of Chapter 119 of the Laws of 1926 it became liable to the State in the sum of four cents per gal-ong on each and every gallon of gasoline sold by it in the State of Mississippi, which was not sold to retail dealers or other persons required by law to pay said tax of four cents per gallon, or that as such distributor or retail dealer the defendant was required to report to the Auditor of Public Accounts all sales of gasoline made by it and to pay thereon for the privilege of engaging in the business of distributor and retail dealer of gasoline the sum of four cents on each and every gallon of gasoline sold in the State of Mississippi.

The defendant denies that from the 1st day of April, 1926, to the 1st day of October, 1927, there was sold by the defendant in the State of Mississippi, 2,391,312 gallong of gasoline, which was sold in the regular course of business

and was not sold to a retail dealer or dealer liable to pay the tax on gasoline, and the defendant denies that because of the sale thereof this defendant became indebted to the State of Mississippi in the sum set out in the bill of complaint, and specially denies that it was and is now indebted to the State of Mississippi in the sum of $22,522.18 or any sum whatever.

[fol. 12] Defendant further denies that because of its failure to pay the said tax demanded of it it became indebted to a penalty of $1,127.60 or any interest whatever on said sum, and specially denies that it was liable to the State for any taxes on gasoline whatever.

Defendant admits that it is attempting to carry on the business of retailing gasoline as a distributor and retail dealer in the County of Harrison, but denies that it is doing so without paying all of the taxes required of it by law, or that the State of Mississippi has been, is now, and will continue to be defrauded of any sum, and specially the sum stated in the bill of complaint, unless the defendant and its agents and servants be further restrained from selling gasoline, the sale of which is taxable in the State of Mississippi, until it pays the tax mentioned and described in the bill of complaint.

Defendant further answering said paragraph, specially denies that it is insolvent, averring the fact to be that the defendant at the time of the filing of the bill of complaint had assets in excess of the sum of $140,000.00.

And now having answered said bill of complaint as far as the same can be answered by the defendant, this defendant further answering said bill of complaint, to be taken as a plea in bar of the relief sought in said bill, respectfully shows unto the Court as follows:

That the defendant is a distributor and retail dealer in gasoline, domiciled at Biloxi, Mississippi, and as such distributor and retail dealer in gasoline sells gasoline both for domestic consumption and for export beyond the limits of the State of Mississippi.

That situated in Biloxi are a large number of canning interests who have found it necessary to use large quanti-[fol. 13] ties of gasoline in the States of Louisiana and Alabama for propelling boats used therein for catching oysters and shrimp. That various persons engaged in this business

secured from the defendant an agreement to furnish them all gasoline consumed or sold by them in the State of Louisiana, and this gasoline was furnished in the following manner:

After the order for said gasoline had been given to the defendant, the defendant would then in excess of all their domestic gasoline used by it, order the shipment of certain cars from points in Texas, Louisiana, or Arkansas, which gasoline, after its arrival in Biloxi, Mississippi, would be by the defendant placed in a storage tank and withdrawn thereafter in fifty gallon iron varrels and shipped by means of a freight boat, this being the only manner of transportation to the fishing district of Louisiana, to various points in the Louisiana marsh; who thereupon used or sold said gasoline to boats fishing in Louisiana, consigned to the purchaser of gasoline, and by means of said common carrier would make delivery of said shipment to said purchaser in Louisiana. A form of the bill of lading in such transportation being hereto attached to this answer and marked Exhibit "A" and prayed to be taken as a part hereof.

That by reason of said manner and method of the sale of gasoline in export or Interstate Commerce the defendant was wholly excepted from payment of any privilege tax due on gasoline, this exception being granted by Section 3 of the Laws of 1926, being Chapter 119, which law is as follows:

"Not Applicable in Certain Cases. This act shall not be construed to require the inclusion in the measure of tax of any gasoline when the same is exported from this State to another State or Nation, nor to require the inclusion in the [fol. 14] measure of tax any gasoline shipped in Interstate Commerce while the same is in transportation, but the gallonage of gasoline shipped or brought from another State or person into Mississippi shall be included in the measure of tax by the person first selling or using the same after it shall have been commingled with the general mass of property in this State. Provided, that distributors making shipments of gasoline into Mississippi, may, as a matter of convenience to purchasers located in Mississippi, assume and pay the tax herein imposed when permission so to do is first obtained from the State Auditor of Public Accounts."

That all gasoline for which a tax is demanded by the complainant in the bill of complaint herein was sold in Interstate Commerce or for export in the manner set out and fully described herein, and for this reason the defendant is not indebted to the complainant for any sum whatever.

And further answering said bill of complaint and as a plea thereto, defendant would show unto the Court that as a retail and wholesale distributor of gasoline in Mississippi it has been its custom and method of doing business to receive certain orders for gasoline in large quantities from persons who were engaged in the packing of oysters and shrimp in Biloxi, Mississippi, and who had need of large quantities of gasoline for furnishing power to their boats used by said packers in the marshes of Louisiana in the catching of shrimp and oysters.

That this defendant would agree to furnish all the gasoline consumed by said packers in Louisiana and Alabama, and to supply gasoline to boats in Louisiana and Alabama furnishing oysters and shrimp to said packers, and would agree to deliver same by any convenient carrier to any designated point in Louisiana and Alabama. After getting [fol. 15] said orders for gasoline said defendant, in addition to all gasoline sufficient to furnish its domestic requirements in Mississippi, would order from points in Louisiana, Arkansas and Texas sundry and various carloads of gasoline to be used by it to furnish orders for said export or Interstate business, which gasoline after its arrival in Biloxi, would be stored in storage tanks in bulk and thereafter drawn out in fifty gallon barrels, which barrels would be marked and accompanied by bill of lading and delivered to a freight boat, this being the only convenient manner of transportation, consigned to various persons at various points in Louisiana and Alabama, and by said freight boat, as agent of the defendant, would be delivered to the designated points in Louisiana and Alabama, and was there used or sold by them to boats engaged in fishing on said waters. A copy of the bill of lading commonly used by the defendant in making said deliveries being attached hereto and made a part of this answer and marked Exhibit A hereto.

That the law of Mississippi governing the sale of gasoline as prescribed by Section 1, 2 and 3, Chapter 119 of the Laws of 1926, is as follows:

"Privilege Tax on Gasoline. Any person engaged in the business of distributor of gasoline, or retail dealer of gasoline, shall pay for the privilege of engaging in such business an excise tax of four cents (4c.) per gallon upon the sale of gasoline by such dealer in this State. No retail dealer shall be required to pay said excise tax when such tax may be paid by the distributor of gasoline, which may be sold at retail by such retailer, nor shall the distributor pay such tax when the same is paid by the retailer."

"Tax Imposed on Use of Same. There is hereby imposed upon the use of gasoline by each person in motor-driven vehicles upon the public roads and streets of this State, an excise tax of four cents (4c.) per gallon on such gasoline [fol. 16] so used, where no tax on the distribution thereof has been paid or is required to be paid by the distributor, retailer or importer. A distributor or retail dealer, of gasoline shall include in his report to the State Auditor of Public accounts all such gasoline used in his own business on the public roads and streets of this State, and shall pay said tax thereon; provided, however, the tax imposed by Section 1 of this Act has not theretofore been paid thereon. Likewise, importers or other persons using gasoline in motor-driven vehicles upon the public roads and streets of this State shall make such report in the same manner and pay the tax on the above rate as is required to be paid by persons engaged in the business of distributing gasoline; provided however, the tax imposed by Section 1 of this Act has not theretofore been or is required to be paid by the distributor or retailer from whom the said gasoline was purchased. The purpose and intent of this section is to require the payment of said tax by persons who purchase, or otherwise obtain, gasoline for use in motor-driven vehicles upon the public roads of this State, from any source other then distributors or retailers who are required to pay the tax imposed by Section 1 of this Act."

"Not Applicable in Certain Case. This Act shall not be construed to require the inclusion in the measure of tax of any gasoline when the same is exported from this State to another State or Nation, nor to require the inclusion in the measure of tax any gasoline shipped in Interstate Commerce while the same is in transportation, but the gallonage of gasoline shipped or brought from another State or

person into Mississippi shall be included in the measure of tax by the person first selling or using the same after it shall have been commingled with the general mass of property in this State. Provided, that distributors mak- [fol. 17] ing shipments of gasoline into Mississippi, may, as a matter of convenience to purchasers located in Mississippi, assume and pay the tax herein imposed when permission so to do is first obtained from the State Auditor of Public Accounts."

And which laws if it in any manner seeks to tax or if it is the purpose of the said laws to tax sales of gasoline made for export or Interstate Commerce as hereinabove set forth, is illegal, invalid, null and void as a burden upon Interstate Commerce, in direct conflict with Clause 3 of Paragraph 8 Article 1 of the Constitution of the United States, which Provides that Congress shall have power "To Regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," and would be further void if it attempted to levy a tax upon one article exported from the State of Mississippi, because it would be in direct conflict with Article 14 of the Constitution of the United States, which provides, among other things "Nor deny to any person within its jurisdiction the equal protection of the laws."

That said Act if enforced in the manner sought by the complainant in this case would deny to the Superior Oil Company the protection given by the State of Mississippi to all other persons engaged in commerce of its laws without the necessity of any sales tax being laid upon its business except as a privilege for doing a certain purpose, which this Company pays in the same manner as to the same extent that all other privileges are paid in the State of Mississippi, and would be further void as laying a duty on exports, because of clause 5, Section 9, Article 1 of the Constitution of the United States.

This defendant would here show that at all times it has in good faith endeavored to comply with the laws of this [fol. 18] State with reference to the sale of gasoline and that it has complied with the same by paying to the State the full amount of taxes as required by law. That at the beginning of its operations it discussed the matter — compli-

ance with the then Attorney General of this State and received his sanction and approval of the course that has at all times since been followed by it. That at all times it made a full, accurate and true report to the Auditor of the State of Mississippi, as required by the law and the said Auditor, and such reports show in detail the total amount of gasoline sold by it, the amount on which said excise tax is due, the gallonage of gasoline sold in Interstate Commerce upon which no tax was due, and that full payments were made thereon.

And now having fully answered said bill of complaint the defendant prays that the same may be dismissed and it discharged therefrom with its reasonable cost.

Superior Oil Company, by John J. Kennedy, President.

Duly sworn to by John J. Kennedy. Jurat omitted in printing.

[fol. 19] EXHIBIT "A" TO ANSWER

No. 4882. Biloxi, Miss., 12/20, 1927.

Received, in good order and condition, from Superior Oil Company, Biloxi, Miss.:

No. pieces	Description of articles	Weight
2	Drums Gasoline	.....

Consigned to Gussie Fountain Pkg. Co. Destination: Grants Pass, La. By Boat Frank Louis. Owned or Operated by Gussie Fountain Pkg. Co. The Master of said Boat Frank Louis acknowledges receipt of said goods and agrees to deliver merchandise as consigned in like good order and condition.

It is further understood and agreed that the property consigned hereon remains the property of the said Superior Oil Company until it shall be delivered to Consignee or Consignee's Agent at point of destination but that all due caution and carefulness will be exercised by Master and crew of said Boat Frank Louis to protect said property and effect a safe delivery without undue delay.

In consideration of the packet rate charged for carrying property described hereon, the owners of this Boat assume liability for its safe delivery. Should there be damage in loading or unloading, transfers to other vessels or any damages in leakage in transit caused by carelessness or negligence, this damage and loss shall be sustained by owners of Boat accepting this shipment.

366-537.

(Signed) Joseph Adams, Master of Boat Frank Louis.

Received $— collect to apply in prepayment of packet charges, on property hereon described, from Biloxi, Miss., to Grants Pass, La.

—— ——, for Master of Boat.

[fol. 20] Form M, No. A-6420
Gasoline Superior Motor Oil

Biloxi, Miss., December 20, 1927.

Gussie Fountain Company, Grants Pass, La.; Superior Oil Company (Incorporation in Mississippi)

	Pounds or gallons	Price	Amount	Total
Gasoline, "Frank Lewis" Truck 6 #1486.	110	12½	13 75	13 75

Superior Oil Company

Incorporated in Mississippi

Truck 6. No. 1486

Biloxi, Miss., 12/20, 1927.

Sold to Gussie Fountain Pkg. Co., Grants Pass., La., Boat Frank Louis and Owners

Drum	Kind	Pounds or gallons	Price	Amount	Total
366 537	Gasoline	110	12½	13.75	.....

Received payment. By —— ——.
Received in good order. By Joseph Adams, purchaser.

[File endorsement omitted.]

[fol. 21] In Chancery Court of Harrison County

[Title omitted]

Amendment to Answer—Filed Febr. 7, 1928

Amendment to the answer in this cause, made pursuant to agreement of counsel and order of the court, by inserting, after the last word on page 7 thereof, the following:

That the law of Mississippi governing the sale of gasoline as prescribed by Sections 1 and 2, Chapter 116, of the Laws of 1922, were as follows:

"Section 1. Be it enacted by the Legislature of the State of Mississippi:

Definitions

As used in this act the word 'Gasoline' means:

Word 'Gasoline' Defined

(a) The volatile substance produced from petroleum, natural gas, oil shales or coal, heretofore sold under the name of gasoline.

(b) Any volatile substance or products of not less than 46% Tagliaubes Baume Test sold or used for motive power for propelling motor vehicles.

Word 'Person' Defined

The word 'person' means and includes every person, corporation, co-partnership, company, agency or association. The distribution of gasoline means a person engaged in the sale of gasoline in any manner not commonly known as retail, but shall not include any person engaged in selling gasoline in whole or in part in interstate commerce.

Retail Dealer Defined

[fol. 22] The term 'retail dealer' includes any person engaged in the sale of gasoline from any place in this State, and delivered to the purchaser thereof in broken quantities.

Excise Tax on Dealers

"Sec. 2. Any person engaged in the business of distributor of gasoline, or retail dealer in gasoline, shall pay for the privilege of engaging in such business an excise tax of 1c. per gallon upon the sale of gasoline by such dealer in this state, except however, such gasoline as is brought into this State and sold in original packages or otherwise in Interstate Commerce, or such as is purchased outside of the State and brought into this State in original packages or otherwise by the consumer for his own use, shall not be taxed; nor shall any retail dealer be required to pay said excise tax when such tax may be paid by the distributor of gasoline, which may be re-sold at retail by such dealer. Nor shall the distributor pay such tax when the same is paid by the retailer."

That Section 2 of the said Chapter 116, of the Laws of 1922, was amended by Chapter 115, Laws of 1924, so as to read as follows:

Sec. 2. Any person engaged in business of distributor of gasoline, or retail dealer in gasoline, shall pay for the privilege of engaging in such business an excise tax of three (3c.) per gallon upon the sale of gasoline by such dealer in this State, except, however, such gasoline as is brought into this State and sold in original packages or otherwise in interstate commerce, or such as is purchased outside of the State and brought into this State in original packages, or otherwise by the consumer for his own use shall not be taxed; nor shall any retail dealer be required to pay said excise tax when such tax may be paid by the distributor of gasoline, which may be sold at retail by such retailer.

[fol. 23] Not Applicable in Certain Cases

However, the tax herein imposed shall not apply to gasoline purchased by the State or any County, municipality or tax paying district of the State for use in the construction, maintenance or repair of public improvements."

That Section 2, of Chapter 115, of the Laws of Mississippi of 1924, were amended by Chapter 119 of the Laws of Mississippi of 1926.

W. L. Guice, Jno. L. Heiss, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 24] In Chancery Court of Harrison County

Statement of Evidence

Stipulation as to Exhibit

By Mr. Sharp: In order to save the necessity of having the State Auditor appear at this Court with voluminous records, it is agreed that the papers here marked Exhibit "A" are true and exact copies of the reports made by the Superior Oil Company to the Auditors of Public Accounts, showing the amount of gasoline sold by Superior Oil Company during the time embraced in this law suit, both as to quantity sold to local people upon which the tax was due and paid, and showing also the quantity claimed by the defendant to have been shipped to other States, and that this statement is admitted in evidence as if it were the original, the original of which said statement being sworn to by F. B. Royster, as manager of the Superior Oil Company.

[fol. 25] Exhibit "A"

Distributor's Report, January, 1926

Mississippi Sales		
Total Gallonage for January		64,589
Company's Use	534	
Shipped to La., Grants Pass, La.:		
Elmer Packing Co	55	
Latimer Pkg. Co	110	
Anticich Packing Co	330	

Biloxi Canning Co	110	
Deer Island F. & O. Co	3,245	
Desporte Pkg. Co	660	
Henry Diaz	1,045	
Dunbar Dukate Co	1,485	
De Jean Packing Co	330	
C. B. Foster Co	1,265	
Foster Fountain Co	1,980	
Gussie Fountain Co	1,045	
Gulf City Pkg. Co	660	
Martin Fountain Co	880	
Johnson Canning Company	220	
Peter Quave	1,320	
Sea Food Company	605	
Wentzell Brothers	220	
P. Williams	3,630	
	19,195	
Company's Use	534	
Harrison County	1,095	
		20,825
Total for tax		43,764

[fol. 26] Special Harrison County Tax

January, 1926

Total	38,726
Company Use	534
Total for Tax	38,192

Distributor's Report, February, 1926

Mississippi Sales		75,000
Company's Use		452
Total gas used by company		75,452
Shipped to Louisiana, Grants Pass, La.:		
George Mallett	55	
Nick Skermetti	110	

Elmer Pkg. Co	330
De Jean Pkg. Co	275
Latimer Pkg. Co	55
Desporte Pkg. Co	550
Peter Quave	1,045
Wentzell Brothers	220
Gulf City Pkg. Co	440
Gussie Fountain Co	1,540
C. B. Foster Co	825
Deer Island F. & O. Co.	4,400
Dunbar Dukate Co	1,980
Martin Fountain Co	1,265
Johnson Pkg. Co	55
P. Williams	7,645
W. B. Skinner	55
Anticich Pkg. Co	1,595
Foster Fountain Co	2,255
Sea Food Company	605
[fol. 27] Henry Diaz	2,365
Alfred Bourgeous	55
Total shipped	27,720

Harrison County, February, 1926

Brought Forward		75,452
Shipped to La		
Harrison County	27,720	
Company's Use	958	
	452	
Total to be deducted		28,130
Total for 3¢ tax		46,322
Harrison County 2¢ Tax for Month		
Harrison County		41,319
Company's Use	958	
	452	
Total to be deducted		1,410
Total for tax		39,909

[fol. 28] Distributor's Report, March, 1926

Mississippi sales		87,475
Company's Use	592	
Shipped out of State, Grants Pass, La:		
Wentzell Bros.	55	
Elmer Pkg. Co	660	
Sea Food Co	660	
Alfred Bourgeois	110	
Charles Ross	110	
John Casavovich	110	
Biloxi Canning Co	55	
Jim Parker	55	
De Jean Pkg. Co	440	
Desporte Pkdg. Co	715	
C. B. Foster Pkg. Co	990	
Anticich Pkg. Co	2,365	
Kennedy Pkg. Co	110	
Biloxi Fishermen Pkg. Co	165	
Henry Diaz	2,695	
Dunbar Dukate Co	1,980	
Johnson Pkg. Co	935	
Gussie Fountain Co	2,365	
Peter Quave	935	
Gulf City Pkg. Co	385	
Deer Island F. & O. Co	6,160	
Martin Fountain Pkg. Co	1,650	
Foster Fountain Co	2,035	
P. Williams	8,085	
	33,835	
Harrison County	980	
Company Use	632	
[fol. 29] Total to be deducted		35,437
Total for tax		52,630
Special Harrison county tax		48,410
Harrison County	980	
Company's Use	632	
Deducted		1,612
Total for tax		46,798

Distributor's Report, April, 1926

Mississippi Sales (including Co. use)		79,987
Shipped to Louisiana, Grants Pass:		
Kennedy Pkg. Co	385	
Henry Diaz	1,980	
Deer Island F. & O. Co	4,400	
Gulf City Pkg. Co	495	
Johnson Canning Co	1,375	
Phillip Williams	275	
De Silvrey Pkg. Co	55	
Capt. Joe Kriss	55	
Dunbar Dukate Co	1,980	
Gussie Fountain Co	1,485	
Anticich Pkg. Co	3,025	
C. B. Foster Pkg. Co	495	
Sea Food Co	825	
Desporte Pkg. Co	715	
Biloxi Fishermen Pkg. Co.	165	
Martin Fountain Co	1,210	
Foster Fountain Co.	1,590	
De Jean Pkg. Co.	440	
P. Williams	6,490	
[fol. 30] Peter Lessa	55	
Total to be deducted		27,495
Total for tax		52,492
Special Harrison County tax		47,645

Distributor's Report, May, 1926

Mississippi Sales (including company use)		67,356
Shipped to Louisiana, Grants Pass:		
Biloxi Fishermen Pkg. Co	110	
Johnson Canning Co	165	
Henry Diaz	220	
Phillip Williams	990	
Joseph Kriss	55	
C. B. Foster Pkg. Co	55	
Martin Fountain Pkg. Co	605	
Foster Fountain Co	220	
Desporte Pkg. Co	110	
Gulf City Pkg. Co	55	

Sanitary Fish & O. Co	330	
Sea Food Co	55	
Deer Island F. & O. Co	3,080	
P. Williams	495	
Amount to be deducted		6,545
Total for tax		60,811

[fol. 31] Distributor's Report, June, 1926

Mississippi Sales (including company use)		69,196
Shipped to Louisiana, Grants Pass:		
Biloxi Fishermen Pkg. Co.	55	
Alfred Bourgeois	55	
Sanitary Fish & Oyster Co	220	
Gussie Fountain Co	55	
C. B. Foster Pkg. Co.	220	
Dunbar Dukate Co	165	
Deer Island F. & O. Co	3,300	
Foster Fountain Co	1,430	
Desporte Pkg. Co	55	
Gulf City Pkg. Co	55	
Henry Diaz	550	
		6,160
Total for tax		63,036
Special Harrison County tax		59,000

[fol. 32] Distributor's Report, July, 1926

Mississippi Sales (including company use)		90,495
Shipped to Louisiana, Grants Pass:		
Biloxi Canning Co.	55	
C. B. Foster Pkg. Co.	495	
Henry Diaz	165	
Foster Fountain Pkg. Co.	1,760	
Dunbar Dukate Co.	110	
P. Williams	330	
Deer Island F. & O. Co.	4,675	
Sanitary Fish & O. Co.	385	
Desporte Pkg. Co.	55	8,030
Total for tax		82,465
Special Harrison County tax		75,297

[fol. 33] Distributor's Report, August, 1926

Mississippi sales (including company use)		107,575
Shipped to Louisiana, Grants Pass:		
Dunbar Dukate Co.	4,675	
C. B. Foster Pkg. Co.	2,090	
Sea Food Co.	2,970	
Henry Diaz	2,805	
Gussie Fountain Co.	3,730	
Anticich Pkg. Co.	1,837	
Peter Quave	770	
Phillip Williams	550	
Foster Fountain Co.	4,785	
Desporte Pkg. Co.	1,705	
DeJean Pkg. Co.	495	
Deer Island F. & O. Co.	3,850	
C. C. Company	55	
Luka Kuljis	3,025	
Sanitary F. & O. Co.	825	
Johnson Canning Co.	1,925	
P. Williams	4,895	40,997
Total gallonage for tax		66,578
Special Harrison County tax		60,834

[fol. 34] Distributor's Report, September, 1926

Mississippi Sales (including company use)		106,535
Shipped to Louisiana, Grants Pass:		
C. B. Foster Co.	2,585	
Luka Kuljis	3,575	
Desporte Packing Co.	1,870	
Gussie Fountain Co.	4,950	
Henry Diaz	2,365	
Johnson Canning Co.	1,650	
Anticich Pkg. Co.	2,365	
Dunvar Dukate Co.	3,520	
P. Williams	5,555	
Sanitary F. & O. Co.	2,035	
Peter Quave	1,045	
Sea Food Co.	3,245	
Foster Fountain Co.	4,290	
Deer Island F. & O. Co.	3,300	

Paul Newman	55	
Philip Williams	330	
E. C. Joullian	440	
DeJean Pkg. Co.	330	
Watts Engineering Co.	55	
Total shipped		43,560
Total for tax		62,975
Special Harrison County 2¢ tax		56,876

[fol. 35] Distributor's Report, October, 1926

Mississippi sales (including company use)		118,329
Shipped to Louisiana, Grants Pass:		
Luka Kuljis	3,850	
Gussie Fountain Co.	5,500	
Anticich Pkg. Co.	2,365	
Peter Quave	990	
Henry Diaz	3,300	
E. C. Joullian Co.	935	
Sanitary F. & O. Co.	2,365	
Deer Island F. & O. Co.	5,885	
Sea Food Co.	2,750	
Desporte Pkg. Co.	3,135	
P. Williams	7,040	
C. B. Foster Pkg. Co.	3,300	
Foster Fountain Co.	5,830	
Philip Williams	605	
Dunbar Dukate Co.	5,280	
Gulf City Pkg. Co.	495	
DeJean Pkg. Co.	275	
Johnson Pkg. Co.	2,255	
Laz Quave	55	
Dubaz Brothers	55	
Total shipped to be deducted		56,265
Total for tax		62,064
Special Harrison County 2¢ tax		53,942

[fol. 36] Distributor's Report, November, 1926

Mississippi sales (including company use)		115,397
Shipped to Louisiana, Grants Pass:		
Gulf City Pkg. Co.	440	
Sanitary F. & O. Co.	2,090	
E. C. Joullian Pkg. Co.	1,265	
Anticich Pkg. Co.	1,045	
Henry Diaz	1,375	
De Jean Pkg. Co.	495	
Peter Quave	330	
Laz Quave	55	
Dubaz Brothers	110	
W. W. Balter	275	
Deer Island F. & O. Co.	4,840	
Luka Kuljis	5,225	
Sea Food Co.	2,915	
Gussie Fountain Co.	3,795	
Philip Williams	220	
Gus Swain	110	
Desporte Pkg. Co.	1,430	
Foster Fountain Co.	2,695	
Dunbar Dukate Co.	5,555	
Brought forward		115,397
Johnson Canning Co. Grants Pass, La.	3,300	
C. B. Foster Pkg. Co.	2,640	
P. Williams	7,205	
P. Williams, Bayou La Batre, Ala.	330	
Total shipped		47,740
Total for 4¢ tax		67,657
Special Harrison County tax		57,611

[fol. 37] Distributor's Report, December, 1926

Mississippi sales (including company use)		100,515
Shipped to Louisiana, v. Grants Pass:		
Walter Baltar	2145	
Peter Quave	110	
Sea Food Company	1,540	
Dunbar Dukate Co.	1,815	

P. Williams	3,410	
Henry Dias	1,485	
Luka Kuljiz	3,565	
C. B. Foster Pkg. Co.	1,045	
Gussie Fountain Co.	2,750	
Foster Fountain Co.	1,870	
Sanitary F. & O. Co.	1,760	
Anticich Pkg. Co.	1,595	
Johnson Canning Co.	2,420	
Desporte Pkg. Co.	1,265	
Gus Swain	55	
De Jean Pkg. Co.	220	
Gulf City Pkg. Co	275	
E. C. Joullian Pkg. Co	770	
Deer S. Island F. & O. Co.	2,915	
Biloxi Fishermen's Pkg. Co.	55	
R. J. Quave	55	
		31,120
Total for 4¢ tax		69,395
Harrison county 2¢ tax		66,036

[fol. 38] Distributor's Report, January, 1927

Mississippi sales (including company use)		101,252
Shipped to Louisiana, Grants Pass:		
Biloxi Fishermens Pkg. Co.	55	
Anticich Packing Co.	660	
W. W. Baltar	2,420	
Henry Diaz	1,155	
Deer Island F. & O. Co.	1,650	
Desporte Pkg. Co.	715	
De Jean Pkg. Co.	385	
Dunbar Dukate Co.	2,475	
Foster Fountain Co	1,155	
C. B. Foster Co	275	
Gussie Fountain Co.	1,870	
E. C. Joullian Pkg. Co.	1,100	
Johnson Canning Co.	1,375	
Luka Kuljis	3,575	
R. J. Quave	55	
Peter Quave	55	
Sanitary F. & O. Co.	1,375	

Sea Food Co.	495	
P. Williams	2,530	
W. W. Baltar	55	
Total shipped out of State		23,430
Amount of 4¢ tax		77,822
Special Harrison County tax		73,919

[fol. 39] Distributor's Report, February, 1927

Mississippi sales (including company use)		110,574
Shipped to Louisiana & Alabama:		
Johnson Can. Co., Grants Pass, La.	660	
Luka Kuljis,	4,950	
Foster Fountain Co.,	1,000	
Anticich Packing Co.,	990	
C. B. Foster Pkg. Co.,	385	
Desporte Pkg. Co.,	660	
De Jean Pkg. Co.,	330	
Dunbar Dukate Co.,	2,090	
P. Williams,	1,870	
Sanitary F. & O. Co.,	990	
Gussie Fountain Co.,	2,805	
Deer Island F. & O. Co.,	1,705	
Henry Diaz,	825	
Philip Williams,	660	
C. E. Joullian Co.,	1,100	
See Food Co.,	550	
Peter Quave,	55	
Bayou La Batre Wharf Sta. Bayou, La., Batre, Ala.	7,005	
W. W. Baltar, Grants Pass, La.	2,475	
Total shipped to La. & Ala.		31,205
Total for tax		79,369
Special Harrison County tax 2¢		74,910

[fol. 40] Distributor's Report, March ,1927

Mississippi Sales (including company use)		119,752
Shipped to Louisiana, Grants Pass:		
W. W. Balter	1,540	
Gussie Fountain Co	2,530	
Deer Island F. & O. Co	2,640	
P. Williams	2,090	
Biloxi Fishermen's Pkg. Co	55	
Sea Food Co	990	
Sanitary F. & O. Co	1,485	
E. C. Joullian Co	605	
De Jean Pkg. Co	220	
Henry Diaz	605	
Anticich Pkg. Co.	2,420	
Dunbar Dukate Co	2,970	
Desporte Pkg. Co	880	
Foster Fountain Co	1,155	
Luka Kuljis	4,290	
Johnson Can Co	2,475	
C. B. Foster Co	880	
Peter Quave	110	
Laz Quave	55	
Martin Fountan Co.	220	
Bayou La Batre, Bayou La Batre, Ala.	936	
Philip Williams, Grants Pass, La	165	
Total shipped out of State		29,316
Total gallonage for 4¢ tax		90,436
Special 2¢ Harrison County tax		86,037

[fol. 41] Distributor's Report, April, 1927

Mississippi Sales (including company use)		134,492
Shipped to Bayou La Matre, Ala	2,584	
Shipped to Louisiana	21,120	
Total gallonage shipped		23,704
Total gallonage for 4¢ tax		110,788
Special Harrison County 2¢ tax		107,988

Distributor's Report, May, 1927

Mississippi sales		99,873
Out State deliveries:		
Bayou La Batre, Ala.	1,503	
Grants Pass, La	15,565	
		17,068
Total gallonage for 4¢ tax		82,805
Special Harrison County tax, 2¢		79,064

[fol. 42] Distributor's Report, June, 1927

Mississippi Sales (including company use)		104,993
Out of State deliveries:		
Grants Pass, La	19,799	
Grand Bay, Ala	110	
Bayou La Batre, Ala	3,025	
		22,934
Total amount for 4¢ tax		82,059
Harrison County 2¢ tax		77,615

Distributor's Report, July, 1927

Mississippi Sales (including company use)		96,513
Out of State deliveries:		
Grants Pass, La	8,855	
Bayou La Batre, Ala	2,336	
Lockport, La.	110	
		11,301
Total for tax		85,212
Special Harrison County tax		78,526

[fol. 43] Distributor's Report, August, 1927

Mississippi sales		112,800
Out State deliveries:		
Grants Pass, La	25,520	
Bayou La Batre, Ala	6,907	
Fosters Canal, La	5,500	
		37,927
Total for tax		74,873
Harrison County special tax (including Co. use)		68,927

Distributor's Report, September, 1927

Mississippi Sales (including Co. use)		110,062
Out State deliveries:		
Grants Pass, La	47,795	
Bayou La Batre, Ala	605	
		48,400
Total for tax		61,662
Harrison County special tax		57,599

Distributor's Report, October, 1927

Mississippi Sales (including Co. use)		110,309
Out State deliveries:		
Grants Pass, La	54,395	
Bayou La Batre, Ala	935	
		55,330
Total for tax		54,979
Special Harrison County tax		50,847

[fol. 44] Distributor's Report, November, 1927

Mississippi Sales (including Co. use)		114,915
Out State deliveries:		
Grant Pass, La	59,070	
Bayou La Batre, Ala	1,650	
Mobile, Ala.	110	
		60,830
Total for tax		54,085
Special Harrison County tax		48,135

Distributor's Report, December, 1927

Mississippi Sales		81.514
Out State deliveries:		
Grants Pass, La	25,190	
Bayou La Batre, Ala	2,255	
		27,445
Total for tax		54,069
Special Harrison County tax		47,905

[fol. 45] F. B. ROYSTER, a witness for complainant, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Sharp:

Q. Mr. Royster, what official position, if any, do you occupy with the Superior Oil Company, the defendant in this suit?

A. I am manager of the Superior Oil Company.

Q. How long have you been manager?

A. Since it was organized.

Q. When was it organized?

A. January, four years ago.

Q. As such manager, you have been in charge of the concern since that time?

A. Yes.

Q. Where is that company located?

A. At Caillavet and Railroad, Biloxi, Mississippi.

Q. You have the customary large storage tanks from which you unload gasoline from cars?

A. Yes.

Q. How many tanks have You?

A. Two gasoline tanks.

Q. Dow do you use them—just keep each one filled as near as you can?

A. No.

Q. Explain how you use them?

A. Our demand for gasoline that is used in automobiles is rather constant. We know a month ahead approximately the amount we will use for automobiles, and that on which we pay tax. The gasoline that was used in shipment did fluctuate, high one month and relatively low the next month. We got our supplies to conform with the demand.

[fol. 46] Q. You used the two tanks for general purposes?

A. In one sense, yes, Yes, I say for general purposes.

Q. Gasoline is shipped in her from your wholesaler or distributor in other states?

A. From the refinery.

Q. In your reports here, I see that you have claimed for January, 1926, certain gasoline alleged to have been shipped to Grants Pass, through the Elmer Packing Company; that is a concern in Biloxi, is it not?

A. It was.

Q. At that time?

A. Yes.

Q. Now that gasoline was sold by your concern in Biloxi to the Elmer Packing Company, as shown by your report here?

A. Yes.

Q. And delivered to Elmer Packing Company's boat at your wharf there in Biloxi?

A. I don't know whether our wharf or his wharf. It was consigned to a point in Louisiana.

Q. For instance, we will take this first item "Elmer Packing Company, Grants Pass, Louisiana, "that was delivered in Biloxi, Harrison County, Mississippi, either at your wharf or his wharf?

A. It was delivered in sealed packages to him to deliver in Louisiana.

Q. That was drawn out of one of your large storage tanks and put in cask or drums and delivered to that wharf and charged to the Elmer Packing Company of Biloxi, Mississippi?

A. Yes.

Q. Do you know what boat that was delivered to?

A. That bill of lading shows what boat it was.

Q. In practically every instance, if not in every instance, [fol. 47] the shipment was delivered to Elmer and the other parties mentioned here, and shipped in boats owned or controlled by that concern, was it not?

A. The Captain of the boat signed a bill of lading agreeing to convey this barrel of gasoline to Elmer Packing Company at this point in Louisiana.

Q. But it was delivered to the boat owned by the party who owned the gasoline?

A. I don't know about that.

Q. Could you furnish us the various bills-of-lading?

A. We have copies of them all.

Q. Have you them with you?

A. No, sir; they are in Biloxi.

Counsel for complainant asks the defendant to furnish bills-of-lading for each shipment, to be furnished as soon as can be done, which the defendant agrees to do.

Q. Each and every shipment was handled in the same way, was it not?

A. Practically.

Q. Attached to your bill is a copy of a bill-of-lading dated 12/20/27, that is copy of the various former bills-of-lading used in other instances?

A. Yes.

Q. That shows you delivered two drums of gasoline, consigned to Gussie Fountain Packing Company, designation, Grants Pass Louisiana, by boat Frank Louis, owned and operated by Gussie Fountain Packing Company; that is customary bill-of-lading? That shipment was set out in your report as interstate commerce?

A. Yes.

Q. The Boat Frank Louis is registered as fishing boat in the proper office, and owned by Gussie Fountain Packing Company?

[fol. 48] A. I don't know.

Q. It was owned or controlled by Gussie Fountain Packing Company?

A. I don't know that.

Q. Your bill-of-lading shows that?

A. We delivered order to Gussie Fountain Packing Company, delivered abroad that boat. We have receipt showing captain of boat received it.

Q. It was owned by Gussie Fountain Packing Company, that boat?

A. Yes.

Q. It was a fishing boat?

A. The Gussie Fountain Packing Company said shipped on freight boat.

Q. You are familiar with the boat Frank Louis, are you?

A. No.

Q. You don't know if it is a fishing boat?

A. I don't.

Q. The bill of lading does not show freight paid, how do you arrive at that?

A. We make charges collect because operated by factory shipping out, and they assume freight charges, whatever they be.

Q. No freight charges paid by the Company?

A. Not on that particular shipment, but have prepaid lots.

Q. On what boats?

A. I don't recall, but lot to plant at Bayou La Batre; but we shipped by water to Bayou La Batre, and where sold there pay Alabama tax on it. Also on C. B. Foster, at Fosters Canal, Louisiana. We don't pay freight on that, they pay that.

Q. You pay Alabama tax in Alabama?

A. No.

Q. Paid in Louisiana?

[fol. 49] A. No, because we sell ourselves in Alabama, but in Louisiana we con't sell, they sell it. The factories sell it, or the captains of the boats sell it.

Q. You sell at this end and they sell in Louisiana?

A. I sell delivered in Louisiana.

Q. It is your property until delivered to consignee in Louisiana?

A. Yes.

Q. And it is consigned to Gussie Fountain Packing Company?

A. Yes.

Q. Your property until delivered to Gussie Fountain Packing Company?

A. Yes.

Q. How is it delivered at Grants Pass? From a station or depot?

A. There is a point there. All boats touch coming and going out in Louisiana, at Grants Pass.

Q. There is no freight facilities, agency or delivery point?

A. I have never been out there.

Q. In fact delivered to fishing boats out there?

A. Yes.

Q. And not to agent or station, or anyone else?

A. Not that I know.

Q. Where it is consigned to you, to whom is it delivered?

A. It is not consigned to us out there.

Q. In no instance consigned to you?

A. No.

Q. You deliver to Grants Pass to fishing boats?

A. By order of concern ordering it.

Q. You sell in Mississippi and not in Louisiana?

A. We sell delivered into Louisiana.

[fol. 50] Q. You sell here to deliver into Louisiana?

A. We deliver into Louisiana and charge for it; we have shipped into Louisiana, and it is our property until reached point in Louisiana.

Q. When do you charge to various consignees, after get notice of delivery?

A. We do not wait until we get notice of delivery into Louisiana, we charge when we get the order and it is shipped.

Q. Paid for by our local concerns?

A. Not necessarily. For instance in Dunbar-Dukate Company, we get out check from New Orleans.

Q. That is their principal office?

A. I presume so.

Q. They have packing in Biloxi you furnish gasoline to?

A. Yes.

Q. And all concerns named in this report, and individuals named in this report, are residents of Harrison County?

A. I don't know.

Q. Could you look it over and tell?

A. I cannot recall, maybe some there and maybe some not, I don't remember.

Q. Have you ever received orders from Grants Pass, Louisiana, for shipping of gasoline to that point?

A. There is no post office there, just stopping off place. I think a majority of the packing plants are Louisiana corporations.

Q. But they are domiciled in Harrison County?

A. Some are and some in Louisiana.

Q. Have you delivered gasoline to plants in Louisiana?

A. Have shipped to plants in Louisiana.

Q. Not included in that statement?

A. Everything is included.

[fol. 51] Q. How was it shipped?

A. By boats.

Q. By their boats?

A. I would not say by their boats, but by boats.

Q. Can you show which were shipped there?

A. I can't. I think a majority of these Harrison County people on this sheet.

Q. Turn over and indicate which are residents of Harrison County.

A. I could not give exactly.

Q. I understand, but asking for best of your recollection?

A. To the best of my recollection, the majority of or greater portion are Harrison County residents.

Q. Can you indicate any who are not, or were not at the time of the sale?

A. Would C. B. Foster Packing Company, who has plant at Fosters Canal, would that be Harrison County resident?

Q. Have they a plant in Harrison County?

A. One plant.

Q. Your order placed there with plant in Harrison County?

A. Yes.

Q. I see on this list Henry Diaz, who is Henry Diaz?

A. He runs a commissary for The Biloxi Canning Company, I think, and all purchases or supplies went through this merchant.

Q. Henry Diaz in Biloxi?

A. Yes.

Q. Same of Peter Quave?

A. Yes.

Q. Wentzell Brothers, who are they?

A. Have packing plant on the point.

Q. In Biloxi?

[fol. 52] A. Yes.

Q. And P. Williams?

A. Agent for us at foot of Pine Street. We have a station down there, and combine independent sales, and instead of making long lost if individuals, group them all under his name.

Q. This gasoline here, 3630, which report shows sold to P. Williams, your local agent at Biloxi?

A. Yes.

Q. And gasoline delivered to him?

A. No, sir; at our pier.

Q. And charged to him?

A. No, charged to those he sold it to.

Q. Why did you make it on your report to him at Grants Pass, Louisiana, when he was local agent?

A. He had in turn sold to Grants Pass, and we just grouped it under one head.

Q. Have you report of these various sales?

A. I think so.

Q. Bills of lading for that?

A. Yes.

Q. Who is George Malley?

A. I don't know.

Q. W. B. Skinner?

A. W. B. Skinner, I think had a packing plant that burned down.

Q. At Biloxi?

A. Yes.

Q. Alfred Bourgeois?

A. I don't know.

Q. Nick Skermetti, do you know who that was?

A. He had a boat named Pan American, he operated in Louisiana waters.

[fol. 53] Q. You- bill-of-lading shows that was delivered to his boat?

A. Yes.

Q. And his boat came to Mississippi waters and got this gasoline and carried it back to Louisiana?

A. I am not sure of that. Nick Skermetti, boat he operates not gasoline burner, fuel oil burner. If he bought gasoline for shipment to Louisiana, hauled it out and sold there.

Q. Came to your place and buy gasoline and carry it out there and sell it? Consigned to him in Mississippi?

A. I could not say, whether shipped to him on that boat, or conveyed to him.

Q. Your bill-of-lading will show that?

A. Yes.

Q. Are there any others that handled it the same way that you know of? That had boats come and get it and carry it over to Louisiana and sell it there?

A. No, I could not say right off hand.

Q. This gasoline was drawn out of your regular tanks into these drums and carried it to your wharf and delivered there?

A. Yes.

Cross-examination.

By Mr. Guice:

Q. You have at your plant in Biloxi, I think, a tank that you use to deliver this oil outside of State from, is that right?

A. I could say yes, and I could say no. We use one tank,—or one tank is sufficient capacity for local demands on which we charge tax. We put in second tank to take care of increase business that developed at that time in shipments out of the State. Often times we operate from [fol. 54] one tank and replace it. We just carry a balance of as small stock as we can over sales to get by with.

Q. What I mean is, there shipments of gasoline by you out of State is material part of your business?

A. Yes.

Q. It is material part?

A. Yes.

Q. Do you make any agreements, or contracts, probably, with people agreeing to deliver to them gasoline out of the State in the manner you set out in your answer to the bill of complaint?

A. Yes. At the time we went into this, can I explain this?

Q. Yes.

A. At the time we went into this, there was one factory bought a load of 100 barrels of gasoline, shipped from Louisiana into Biloxi, and the price was four or five cents a gallon cheaper than what we could sell for, and pay the tax. We saw it would make big inroads into our business, and in fact we could not maintain if that kept up, and we made inquiries from our attorney and I think our attorney got advice from the Attorney General that we were in our rights to ship out of the State to meet this competition. By shipping into Louisiana, we met Louisiana competition.

Q. There was competition in Louisiana?

A. Yes.

Q. Explain to the Court the difference between the price that the Louisiana gasoline dealers could deliver a gallon of gasoline to Grants Pass, and price you could deliver were tax included in your delivery?

Counsel for complainant objects on ground that price of gasoline in Louisiana has nothing to do with the question interstate commerce, or sale in Mississippi.

[fol. 55] Objection overruled.

Q. Go ahead and tell what could a man doing business in New Orleans deliver a gallon of gasoline, what would be the difference between his price and your price, were your tax included?

A. The prices fluctuate in Louisiana, and also in Mississippi. There are times when it could be bought for four cents a gallon less and times six less than we could sell it for with our tax.

Q. Were people in Louisiana competing with you for this business at Grants Pass?

A. Yes.

Q. Were they able to make deliveries at Grants Pass?

A. Yes, and were making delivery out into the marsh, would send freight boats out loaded and are doing it now and are factors in it big.

Q. Could you have sold gasoline that was in Biloxi, except with agreement to deliver it at Grants Pass?

A. No.

Q. Is that the understanding?

A. We agreed if they gave us the whole business, we would deliver it to them according to the understanding that we had with the attorney and the Attorney General we were within the law to do that. We then agreed to keep them supplied with shipments of gasoline to Louisiana at the price, less the tax.

Q. Is it not a fact that a great many of these corporations, while domiciled in Biloxi, also are domiciled in Louisiana, such as Biloxi Canning Factory, C. B. Foster Packing Company, Dunbar Dukate Company, et al.?

A. Yes.

[fol. 56] Q. Grants Pass, you stated, is central distributing point for all kinds of supplies for resident boats out in the Marsh?

A. Yes.

Q. That is also the point the State of Louisiana requires them to go to get a license?

A. Yes, both in and out.

Q. Way of operation of these companies is as follows: That they either own or have arrangements with the owners of small boats to furnish shrimp to them. These boats are manned, whether owned by them or not, or by independent persons, are manned by crews who get the boat for shrimp?

A. Yes.

Q. They are not employed by the month?

A. No.

Q. Get boat for shrimp and go out in the marsh and stay two, three or four weeks, and are supplied from Biloxi by means of these freight boats?

A. Yes.

Q. Is that right?

A. Yes.

Q. Did you know it at time you contracted with these people?

A. Yes, it was explained to me by the factory.

Q. These freight boats that carried gasoline, carried food and other supplies also?

A. I think so. I was told so.

Q. These freight boats carried this out there,—what did they bring back?

A. Shrimp.

Q. Which they bought out in the marsh?

A. Yes.

Q. As a matter of fact, by what agency are most of the [fol. 57] freight boats propelled—by gasoline or fuel oil?

A. Majority of freight boats use fuel oil.

Q. Smaller boats burn what?

A. Gasoline.

Q. And this gasoline is distributed to them in marsh and is charged to the man who buys from you, and through whom you deliver?

A. Yes.

Q. In other words, operation of your business was, you agreed to deliver this gasoline to these people in such quantities as they might need to their boats in marsh, and when ordered, it was with the knowledge of that you were to deliver. You send gasoline down to wharf and put it on wharf, or on boat, and the Captain of the boat receipt you for gasoline with knowe*l*dge and instruction to take to Louisiana, and it was taken to Louisiana and in Louisiana

either consumed on the boats, they had employed, or sold by them to other boats, is that right?

A. That is my distinct understanding.

Q. Did you ever sell any gasoline of your knowledge, or with your consent, to boats, to put there or in hold and sell without arrangement, and not pay tax?

A. When we did, we charged tax. We have lost a great deal of business not doing that.

Q. Can you remember any instance of any gasoline shipped to Foster in Louisiana in one hundred barrels at time?

A. Yes.

Q. What would he do with it to your knowledge over there?

A. Sell it, and used at his own plant at Foster Canal, Louisiana. We sent it there on his boat, and while I was not there, I am told this. I ordered storage tanks for him. [fol. 58] Q. Is there included in gasoline you shipped to Superior Oil Company, sold to Bayou La Batre?

A. All on their report.

Q. How many gallons did that amount to?

A. Between forty and fifty thousand.

Q. Sold as shipped to Bayou La Batre?

A. Yes.

Q. Shipped on what kind of boats?

A. I engaged three times boats from C. B. Foster, and two or three times from Foster Fountain Company, and on maybe dozens occasions shipped fifteen to twenty-five or forty barrels on Sea Food boats, come into Biloxi with cargo of shrimp from Alabama factory, and carry it back.

Q. You paid freight?

A. Yes.

Q. Same identical boats shipped out in marsh on?

A. Identical. They will carry any freight.

Q. Your sworn statement shown there is correct?

A. Yes, to the best of my knowledge that is correct.

Q. And the gasoline you failed to account to the state for the tax on was actually exported by you from the State?

A. Yes.

Q. It was contracted for and shipped from your place of business with the understanding it was to be exported?

A. Yes, and receipted for by the Captain of the boat.

Q. Was that requirement that you were to deliver it there part of your understanding, to be your stuff until it got out of the state?

A. Yes.

[fol. 59] Redirect examination.

By Mr. Sharp:

Q. As I understand you, this gasoline sold to the various packing companies, sold to them and was charged to their fishermen to whom it was delivered, and when the boat comes in with the fish, it is deducted, and they are paid the difference?

A. I presume so.

Q. Way it was explained to you?

Q. The way they settled for it, I was not concerned. We sold it to them in Louisiana, and we understood, to best of our knowledge, it was delivered into Louisiana and Alabama, and as to how they settled for it, it is just hear-say.

Q. That is your information. Sort of like merchant furnishing a farmer, furnishes farmer, and when his crop comes in, buys the cotton or stuff, and takes out amount of account.

A. I understood in some instances did not settle that way. In fact, way they settled for it, I was not concerned.

Q. By this method of handling it was sold into Louisiana?

A. Yes.

Q. But paid no tax in Mississippi or Louisiana?

A. We did not operate in Louisiana, and were not called on to pay tax in Louisiana.

By Counsel for Defendant: We object, as it makes no difference; this stuff exported from Mississippi to Louisiana, delivered in original package, and not taxable.

Objection overruled.

Q. As I understand it, you shipped it there and delivered it to them, and it is yours until delivered to consignee?

[fol. 60] A. It is ours until delivered at Grants Pass.

Q. You deliver it to their men at Grants Pass?

A. They deliver it at Grants Pass.

Q. When you deliver it, it becomes his property?

A. Yes.

Q. No tax is paid in Louisiana?

A. We do not. We do not operate in Louisiana.

Q. Do you knoe of your own knowledge it is unloaded in Grants Pass on boat?

A. I do not, I have never been there.

Q. You don't know?

A. No more than if delivered to Railroad or Express wagon, or ox wagon. I am not supposed to know.

Q. How many of these parties whom I call here are stockholders in your Company, Kennedy Packing Company?

A. They are not.

Q. Henry Dias?

A. He is not.

Q. Deer Island Fish and Oyster Company?

A. They are not.

Q. Gulf Cities Packing Company?

A. Skermetti connected with Deer Island Fish and Oyster Company is connected with our Company.

Q. Anybody else with it?

A. Not that I know of.

Q. Henry Dias?

A. Not that I know of.

Q. Gulf Cities Packing Company?

A. Mrs. Sophie Desporte owns it. Her husband died.

Q. Johnson Canning Company?

A. They are not.

[fol. 61] Q. Phillip Williams?

A. No.

Q. DeSilva Packing Company?

A. No.

Q. Captain Joe Kriss?

A. No.

Q. Desporte?

A. He is.

Q. Gussie Fountain?

A. He is.

Q. Antichich Packing Company?

A. They are.

Q. C. B. Foster?

A. He is.

Q. Desporte Packing Company?

A. They are.
Q. Biloxi Fishermen's Packing Company?
A. Owned by C. B. Foster.
Q. Indirectly?
A. Yes.
Q. Martin Fountain Co.
A. They are.
Q. Foster G Fountain Company?
A. They are.
Q. De Jean Packing Company?
A. He is not.
Q. Williams?
A. No.
Q. Peter Lessa?
A. Don't know him.
Q. Do you know at that,—at what price this is resold to fisherman by the Packing Company?
[fol. 62] A. I am not interested.
Q. You don't know?
A. I have no idea.

L. O. JOHNSON, a witness for complainant, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Sharpe:

Q. You are connected with the Johnson Packing Company, of Biloxi, Mississippi.
A. Yes.
Q. What position, if any, do you occupy with them?
A. I am general manager.
Q. That is packing plant at Biloxi, Mississippi?
A. Yes.
Q. You have been buying considerable gasoline from Superior Oil Company, also domiciled at Biloxi, during the past two years, have you?
A. Gasoline and crude oil.
Q. Explain to the Court how that transaction is handled—gasoline?
A. Most of my boats burn crude oil, as well as gasoline.

Q. I don't care about crude oil.

A. When freight outside, buy several drums of gasoline and put on boat and take it to Grants Pass and from there distribute it among other boats.

[fol. 63] Q. As I understand it, you go to the office at Superior Oil Company, and say you want to get so many gallons of gasoline, and you buy it and have it delivered to your boats?

A. In full drum lots.

Q. And your boats take it to Grants Pass?

A. Yes, and get clearance from State of Louisiana, and then go out. We buy gasoline in broken lots and that is put in boats and they use that to go out. Full drum lots are put on that boat and delivered in Grants Pass and distributed among other boats, and if they have to use any themselves they break it.

Q. Place order there in Biloxi with Superior Oil Company for so many gallons of gasoline?

A. So many drums.

Q. Deliver at your wharf or theirs?

A. Delivered to boats and boats sign bill of lading for Grants Pass.

Q. These are fishing boats?

A. Ours are nothing else.

Q. Not registered as freight boats?

A. No sir, they are freight boats.

Q. Is it required to be kept, registry of boats?

A. No, we pay all expenses, send out to freight shrimp for us—to buy for us.

Q. For you?

A. Yes.

Q. Not common carriers,—your boats?

A. Not my boats.

Q. You have contract to send out and bring in shrimp?

A. Sure.

Q. And when you get this gasoline, it is charged to you, and you pay for it to Superior Oil Company?

A. Yes.

[fol. 64] And they you charge it to your fishermen, or ro the parties to whom you deliver it, and when the catsh comes in, you deduct the amount of their account out of the catch and pay them the difference?

A. Yes.

Q. What price do you furnish it to your fishermen at?

A. Whatever the prevailing price is. What we pay for it.

Q. At same price?

A. What we pay, we furnish to fishermen at that price.

Q. Just furnish to encourage them to get their fish and their catch?

A. Yes.

Q. You have nothing to do further than placing order with Superior Oil Company at Biloxi?

A. We give credit to certain amount of boats. Boats order oil and take to Grants Pass and deliver to State of Louisiana get permit to go ahead to work, and go out among fleet of boats and sell from boats.

Q. None delivered on Grants Pass?

A. No, sir, in Louisiana.

Q. Grants Pass is in Louisiana?

A. Yes, sir; station in Louisiana where we get permits to operate in Louisiana.

Q. No depor or other facilities there?

A. There is a house, I understand. I have never been there myself.

Q. You deliver to boats among fishermen?

A. Yes, sir.

Q. These bills are delivered to you and paid at your plant in Biloxi monthly?

A. Each trip.

[fol. 65] Q. And you have placed in advance with Superior Oil Company an order for so much gasoline for each boat, given credit with Superior Oil Company for so much gasoline?

A. Order four or five drums for oil. Use "Farewell" for instance: takes crude oil for herself and gasoline to supply smaller boats that catch shrimp and put on her.

Q. Delivered down there and charged to you at wharf?

A. Delivered to Captain of boat. He signs bill of lading to take to Grants Pass, and I don't know what he does after he gets there.

Q. Who pays the freight?

A. No freight charge. Did that gratis.

Cross-examination.

By Mr. Guice:

Q. There is no line of railroad running to Grants Pass, is there?

A. No.

Q. There is no regular packet line Superior Oil Company could deliver this stuff to?

A. No.

Q. Is there large fleet of boats out there in Spring and Winter, have one hundred and one hundred and fifty at a time?

A. Several hundred.

Q. Boats stay week or two, or three, or four, and put catch on shore at Biloxi?

A. Stay as high as seven weeks.

Q. When they want food, or gasoline, order in Biloxi, and what you call freight boats take it out and deliver to their boat?

A. Send order and get groceries and stuff.

[fol. 66] Q. And same boats carry their stuff and deliver it?

A. I understand that.

Q. That is way seven or eight hundred men subsist out on the marsh?

A. Never come in under two weeks.

Q. Way they subsist?

A. Yes.

Q. There is no store there?

A. Not that I know of.

Q. All have their supplies carried on these boats?

A. I understand that to be right.

Q. You understand arrangement with Superior Oil Company, that they deliver for your boat, or whatever boat you designate out to these smaller boats?

A. I think so.

Q. And Superior Oil Company delivered instruction for captain of boat to deliver on these boats consigned to Grants Pass this gasoline?

A. I don't get that.

Q. And Captain of your boat had instructions—was ordered to deliver to his order on that boat, any number of drums of gasoline?

A. Yes.

Q. Who would ring up and order this stuff?

A. Ordered as many as required.

Q. Deliver on your boat and bill of lading signed there?

A. And sent to Grants Pass that day.

Q. Do you remember getting gasoline in Biloxi, put on your boat, or used, at any point of designation, not billed for, or tax added?

A. What is that?

[fol. 67] Q. When you got your gasoline in Biloxi at your factory, was tax added to your gasoline?

A. Why sure.

Q. You paid that?

A. They paid that. Charged on gasoline. We have nothing to do with paying tax. We pay for oil and they do that.

Redirect examination.

By Mr. Sharp:

Q. Pay for gasoline each trip, as go out?

A. No, I pay my bill for gasoline every thirty, present me with bill.

Q. You just pay your account monthly with Superior Oil Company?

A. Yes.

Q. When does that become your gasoline?

A. It never becomes mine that I know of. Boatmen get it.

Q. It is charged to you?

A. I stand good for it. Boatmen used it and when they come they settle with me. I understood Superior Oil boatmen used. I never use it.

Q. You place order?

A. The Captain of the boats place it. I give certain boats credit. I notify them what boats freighting for me in Louisiana, and give them oil asked for.

Q. This is charged to you?

A. At end of month I get bill and check against the boats.

Q. How many boats do you own?

A. Six.

Q. What are they?

A. Jennie Johnson, Farewell, Wampas, Catalog, Princess Pat and Sheik.

[fol. 68] Q. Which of the six are oil burning boats?

A. All but Jennie Johnson.

Q. Jennie Johnson is not?

A. She burns gasoline.

Q. Others have no gasoline engines on them?

A. Use gas oil or crude oil.

Q. Have no gasoline engine?

A. Can burn crude oil.

Recross-examination.

By Mr. Guice:

Q. Is it fact that your business is divided into two types, or two places. You pack—clean and pack shrimp and oysters in Biloxi. You buy, and have regular place to buy these things, which is your boat in Louisiana?

A. We handle ninety-nine per cent of our shrimp out there off freight boats.

Q. You buy there?

A. Bought in State of Louisiana.

Q. Engaged in business there as much as in Mississippi?

A. Yes.

Q. Plant for packing in Mississippi, but buy in Louisiana?

A. Yes.

[fol. 69] CAMILLE DE SILVA, a witness for complainant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharp:

Q. You are connected with the De Silva Packing Company?

A. I was until lost it; I—it burned down little over a year ago.

Q. At time these items of gasoline charged against you, that concern was domiciled in Biloxi?

A. Yes.

Q. You bought gasoline in the last three years from Superior Oil Company?

A. Yes.

Q. At Biloxi?

A. Yes.

Q. How did you purchase that, and how was it handled?

A. Well, the boats we had in Louisiana, all gasoline bought from Grants Pass.

Q. How would you place order, and how was it delivered?

A. Way we placed order, we order drum of gasoline.

Q. Got from Superior Oil Company?

A. Yes.

Q. How ordered to deliver, at your wharf of their wharf?

A. We rung them up and they have stuff and boat come by and pick it up.

Q. Your boats?

A. Yes.

Q. And carried it to Grants Pass or Louisiana Marsh, and delivered to boats?

A. Yes.

[fol. 70] Q. You charged it to boatmen there, and whenever settled, paid Superior Oil Company, and collected from fisherman out of catch?

A. Yes.

Q. You deducted amount of supplies, including gasoline and paid them the difference?

A. Yes.

Q. You paid to Superior Oil Company?

A. Yes.

Q. Shipped in your boats, or boats under your control?

A. Yes.

Cross-examination.

By Mr. Guice:

Q. Ring up and tell them wanted drum of gasoline to ship to Grants Pass?

A. Yes.

Q. Boat stop by wharf?

A. Yes.

Q. And it was understood that was used for export, and not used in Mississippi?

A. Yes.

Q. And carried out in Louisiana marsh and sold by you to other men out there?

A. Yes.

Q. Other people out there?

A. Yes.

[fol. 71] STIPULATION RE TESTIMONY, ETC.

For the purpose of shortening the record it is hereby agreed that all of the shipments shown on the report and all of the sales shown on the report marked Exhibit "A" and filed in this cause were handled in the same manner as shown by the testimony already introduced, and it is agreed that the witnesses would testify that each and every sale reported as non taxable was sold and handled in the manner already testified to, and that the boats carrying the gasoline were and are classified by the United States Government as being engaged in fishing. It is further agreed that if the defendant, if liable, it it liable only on shipments to Louisiana, and not to shipments to Alabama; and if liable at all, is liable on all of shipments to Louisiana as shown by Exhibit "A."

This is all of the testimony and evidence introduced on the trial of this cause.

[fol. 72] IN CHANCERY COURT OF HARRISON COUNTY

[Title omitted]

DECREE—Filed April 28, 1928

This cause coming on to be heard on Bill of Complaint, Answer thereto, Exhibits, motion to dissolve the injunction

herein, and oral testimony heard by the Court and the Court having fully considered same as well as arguments made thereto, is of the opinion that the allegations of the bill are not sustained, and the same should be dismissed and the injunction heretofore granted herein shall be dissolved.

It is therefore ordered that the Bill of complaint be and the same is hereby dismissed and that the injunction heretofore granted in this cause be and the same is hereby dissolved, and the bond posted herein is hereby released, both principal and sureties thereon being fully discharged, and complainant having prayed an appeal to the Supreme Court of Miss. with Supersedeas same is hereby granted in open Court.

Ordered, adjudged and decreed this the 7th day of February, A. D. 1928.

V. A. Griffith, Chancellor.

[File endorsement omitted.]

[fol. 73] Minute entry of argument and submission May 21, 1928, omitted in printing.

[fol. 74] IN SUPREME COURT OF MISSISSIPPI

No. 27247

STATE ex Rel. RUSH H. KNOX, Attorney General,

vs.

SUPERIOR OIL COMPANY

ORDER OF AFFIRMANCE—June 11, 1928

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Harrison County and this court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause at the January Term, 1928, on February 7th, 1928, be and

the same is hereby affirmed. It is further ordered, adjudged and decreed that the State of Mississippi do pay the costs of the clerk of this court out of appropriation made therefor in cases in which the State fails.

[fol. 75] IN SUPREME COURT OF MISSISSIPPI, DIVISION B

Ethridge, P. J.

[Title omitted]

OPINION—Filed June 11, 1928

The Superior Oil Company, a corporation domiciled and having its place of business at Biloxi, Mississippi, is engaged in the sale and distribution of gasoline In the course of its business it orders gasoline from refineries located outside the state; the gasoline is shipped in tank cars from the place of origin to Biloxi, and there unloaded into large storage tanks owned by the Oil Company From these tanks it is drawn into drums, tanks, barrels, and other containers, as needed or business demands Appellee sells the gas from these storage tanks at both wholesale and retail, to filling stations and to individuals, in such quantity as desired by the purchaser. It also sells large quantities of gasoline to concerns engaged in the fishing and packing business. The gasoline sold to individuals and filling stations is reported to the Auditor and the tax paid thereon. The gasoline sold to the packing companies and fishermen is also reported to the Auditor but is reported as "Shipped in interstate commerce," or other similar terms used in the reports indicating interstate commerce.

The arrangement by which this interstate commerce is conducted, as shown by the evidence, is that the fishing company or packing company buys gasoline in sealed drums, consigned to it at Grants Pass, Louisiana, at which point such companies have men stationed who are engaged in [fol. 76] catching fish and other seafood for use in their business. The gasoline so purchased by the fishing company or packing company, is charged to such Company and delivered on the wharf at Biloxi to a boat owned by the

fishing company or packing company. The contract between the Superior Oil Company and such fishing company or packing company, provides that the title is not to pass until the shipment reaches its destination, but provides that the packing company or fishing company, or the boat owned by it, shall carry the gasoline to Grants Pass without charge to the seller and assume all responsibility for the safe delivery of the gasoline at its destination. The gasoline is then sold by the packing company or fishing company to the individuals engaged by it to catch fish and other seafood for its use, and the gasoline is charged to such fishermen by the packing company or fishing company, and the amount of such deducted from the sum due by the packing company or fishing company to the fishermen for their services.

The State, through the Attorney General, brought this suit to recover the excise tax imposed by law on the sale of gasoline in this State, and it is contended that the arrangement herein described is a mere scheme to avoid the payment of the tax due the State, and that the delivery of the gasoline on the wharf at Biloxi to the boat owned by the packing company or the fishing company, to be carried by it, free of charge, to the State of Louisiana, and there sold, is not, in fact, an interstate commerce transaction, but is the transaction of business in Mississppi, and the State is entitled to collect the tax levied upon the gasoline sold in the State under such arrangement.

The master of the boat signs the bill of lading for such [fol. 77] goods. Said bill of lading contains the following stipulation:

"In consideration of the packet rate charged for carrying property described hereon, the owners of this boat assume liability for its safe delivery. Should there be damage in loading or unloading, transfers to other vessels or any damages in leakage in transit causes by carelessness or negligence, this damage and loss shall be sustained by the owners of boat accepting this shipment."

Both the Superior Oil Company and the fishing companies and packing companies reside in the city of Biloxi. The Superior Oil Company charges the gasoline at once to the company purchasing it; it does not wait until it gets notice of delivery of the gas in Louisiana.

The decision of this case will turn upon the question, whether this transaction constitutes interstate commerce.

In the case of United States vs. Simpson, 252 U. S. 465, 64 L. ed. 665, 45 S. C. 364, 10 A. L. R. 510, the Supreme Court of the United States held that, the transportation by the owner in his own automobile of intoxicating liquors for his personal use is comprehended by the prohibition of the Reed Amendment of March 3, 1917, par. 5, against the transportation of intoxicating liquors in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any state the laws of which prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes.

The indictment in that case charged that the defendant, being in the city of Cheyenne, Wyoming, 'bought, paid for, and owned,' 5 quarts of whiskey, and thereafter in his own automobile, driven by himself, transported it into the city of Denver, Colorado, intending there to devote it to his own [fol. 78] personal use. Colorado prohibited the manufacture and sale therein of intoxicating liquor for beverage purposes. The court decided that this transaction constituted interstate commerce within the meaning of such Act

There was a similar holding in the case of United States vs. Hill, 248 U. S. 420, 63 L. ed. 337, 39 Sup. Ct. 143. In that case the indictment charged that Hill, on the 20th of November, 1917, being in the state of Kentucky, there intended to go and be carried by means of a common carrier, engaged in interstate commerce, from the state of Kentucky into the state of West Virginia, and intended to carry upon his person, as a beverage, for his personal use, a quantity of intoxicating liquor, to wit, one quart thereof, into the state of West Virginia, and did in the State of Kentucky purchase and procure a quantity of intoxicating liquor, to wit, one quart thereof, contained in bottles, and did then and there board a certain trolley car being operated by a common carrier corporation engaged in interstate commerce, and by means thereof did cause himself and the said intoxicating liquor, then upon his person, to be carried and transported in interstate commerce into the state of West Virginia. It is charged that this was done in violation of the Act of Congress approved March 3, 1917,

commonly known as the Reed Amendment, and that the transaction constituted interstate commerce.

In the case of Kirmeyer v. Kansas, 236 U. S. 568, 59 L. ed. 721, 35 Sup. Ct. 419, it was held that, "The business carried on within the state of Kansas by a liquor dealer who maintains an office and warehouse in a small town on the Missouri side of the Missouri river, connected by a bridge with Leavenworth, Kansas, and who fills all orders for liquors from Kansas customers by deliveries from such warehouse in his own horsedrawn wagons, either directly [fol. 79] or by hauling the liquor to the Leavenworth railway depots for transportation to other Kansas points, all mail orders from Kansas customers being carried across the river before being opened, and all liquor received by him at the railway depots at Leavenworth, though destined for Kansas customers, being first hauled by him to the warehouse across the river—is none the less interstate commerce, and, as such, protected from state interferences, because such dealer is a citizen of Kansas, who, having long carried on an illegal liquor trade in Leavenworth, moved his business across the river to evade the Kansas prohibitory laws, without changing his residence, or removing from Leavenworth the wagons and teams used by him in conducting the business."

In that case the Supreme Court of the State of Kansas reversed the trial court, which had held that the shipment was in interstate commerce, with which the state could not interfere. The Supreme Court reversed it on the ground that it was a mere evasion of the Kansas law, and in its opinion said: "The broad question here is whether the defendant was really engaged in commerce between the states of Missouri and Kansas, or was he only seeking by tricks and devices to evade the laws of his state—doing by indirection that which could not lawfully be done by ordinary and direct methods? Referring to numerous opinions of this court it further said they 'do not preclude a fair inquiry into methods and practices in order to determine whether transactions under investigation constitute legitimate interstate commerce or are colorable merely, and intended to evade and defeat the just operation of the Consitution and law of the state.' " The court further said, "It is true that a citizen of Kansas who finds that his business is pro-

hibited by our laws may in *food* faith engage in the same business in another state where the legal obstacle does not exist. But he may not, under the guise of moving across the state line, and other shifts or devices to evade the statutes of the State, continue in the prohibited business [fol. 80] here and be immune from the penalties of our law. From the facts found by the court and from the testimony of the defendant, it appears that his business was not legitimate interstate commerce, but was carried on in violation of the statutes of this state, and is subject to abatement and injunction."

The United States Supreme Court condemned this view of the state court, and held that the transaction constituted interstate commerce. The court said: "The essential facts disclosed by the record are summarized in paragraphs (a) and (b) following.

"(a) Rigorous statutes have long prohibited the sale of intoxicating liquors within the state of Kansas. The city of Leavenworth lies on the Missouri river; on the opposite bank in Missouri is Stillings, a village with one store, roundhouse, a few residences eight or ten beer warehouses, and a freight depot without a regular agent, but no postoffice. For a long time plaintiff in error has resided in Leavenworth, and prior to 1907 he carried on there an illicit beer trade; for use in the same he there maintained a business place and warehouse and kept wagons and teams. *In that year, alarmed by the activities of officials, he discontinued this office and warehouse and kept wagons and teams.* In that year, alarmed by the activities of officials, he discontinued this office and warehouse and immediately opened others in Stillings, and connected them with the Leavenworth telephone exchange. He did not change his residence nor remove his wagons and teams from Leavenworth, but kept them in quarters connected by telephone with the local exchange, and continued to use them for hauling to and [fol. 81] from the new warehouse and making deliveries. Thereafter he received at Stillings barrels, cases, and casks of beer in carload lots from Kansas City and other points; sometimes he received like merchandise at the railroad depot in Leavenworth, which was then hauled across the river. At the Stillings office he received and accepted orders for beer to be delivered in Leavenworth and other points

in Kansas. Eighty-five per cent came by telephone; the remainder through the Leavenworth postoffice, but these were carried to his place of business before being opened.

"(b) Accepted orders for delivery in Leavenworth were filled by setting aside the cases, kegs, or casks in the warehouse, tagging them with the names of the purchasers, and then sending them daily—sometimes, oftener—over the bridge in his wagons to the residences of purchasers. For such deliveries no charges were made. If the goods were intended for other points in Kansas they were hauled to the railroad station at Leavenworth, and there turned over to the carrier. The business for the most part was 'family trade', for private use only, and amounted to $500.00 per month. A license tax was paid to the Federal government; also merchant's and ad valorem taxes to Missouri; he had no Kansas license. The empty cases were gathered up by the drivers throughout Leavenworth, loaded in cars there, and shipped to some other state. Advertisements in two Leavenworth papers announced his business and location at Stillings, and likewise gave the telephone number at the horse barn. When parties desiring beer called over this telephone they were advised to call the Stillings office. Collections were usually made by the plaintiff in error or by collectors; sometimes by mail. Drivers [fol. 82] received no orders from purchasers."

In the concluding portion of the opinion the court after reviewing the cases cited, said: "Considered in the light of our former decisions, if the business carried on by plaintiff in error after removal of his office to Stillings had been conducted by a dealer who had always operated from that place, we think there could be no serious doubt of its interstate character. And we cannot conclude that a legal domicil in Kansas, coupled with a reprehensible past and a purpose to avoid the consequences of the statutes of the state, suffice to change the nature of the transactions. Otherwise one of two persons located side by side in the same state, and doing the same business in identical ways, might be engaged in interstate commerce while the other was not."

We think this case is controlling and the transactions here under review are very similar to the ones there held

to be interstate commerce. See Rossi vs. Pennsylvania, 35 Sup. Ct. Rep. 677, 59 L. ed. 1201, 238 U. S. 62; U. S. vs. Ohio Oil Co. 34 Sup. Ct. Rep. 957, 234 U. S. 548, 58 L. ed. 1459; Texas & N. O. Ry. Co. vs. Sabine Tram Co., 227 U. S. 116, 33 Sup. Ct. Rep. 229, 57 L. ed. 442; State of Missouri vs. Kansas Natl. Gas Co., 265 U. S. 298, 44 Sup. Ct. Rep. 554, 68 L. ed. 1027; Pennsylvania Gas. Co. v. Public Service Com. 252 U. S. 23, 40 Sup. Ct. Rep. 279, 64 L. ed. 534; Public Utilities Com. vs. Attleboro St. & El. Co. 273 U. S. 83, 47 Sup. Ct. Rep. 297, 71 L. ed. 549; Baltimore & Ohio S. W. R. R. vs. Seattle, 263 U. S. 166, 43 Sup. Ct. Rep. 28, 67 L. ed. 189; Lemke v. Garmers Grain Co., 258 U. S. 50, 42 Sup. Ct. Rep. 244, 66 L. ed. 458; Binderup v. Pathe Exchange, 263 U. S. 291, 44 Sup. Ct. Rep. 96, 68 L. ed. 308.

The judgment of the court below will be affirmed.

Affirmed.

[File endorsement omitted.]

[fol. 83] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER REMANDING CAUSE FOR ARGUMENT BEFORE DIVISION "A"—Sept. 24, 1928

Ordered that this cause be remanded to Division "A" for argument on November 12th, 1928.

[fol. 84] Minute entry of argument and submission November 12, 1928, omitted in printing.

[fol. 85] IN SUPREME COURT OF MISSISSIPPI, EN BANC

No. 27247

STATE ex Rel. RUSH H. KNOX, Attorney General,

vs.

SUPERIOR OIL COMPANY

DECREE—Dec. 22, 1928

This cause coming on to be heard on the suggestion of errors filed herein and this court having sufficiently examined and considered the same, doth order, adjudge and decree that said suggestion of errors be and the same is hereby sustained. It is further ordered, adjudged and decreed that the decree of this court entered in this cause on June 11th, 1928, be and the same is hereby cancelled and set aside and that the following decree be now entered herein.

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Harrison County and this court having sufficiently examined and considered the same and being of opinion that there is error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause at the January Term, 1928, on February 7th, 1928, be and the same is hereby reversed and this court proceeding now, here, to render such decree as should have been entered and rendered in the court below, doth order, adjudge and decree that the appellant, State-Ex Rel. Rush H. Knox, Attorney General, do have and recover of and from the appellee Superior Oil Company the sum of Twenty Five Thousand, Two hundred and Fifty Four and 98/100 Dollars with 6 per cent interest per annum from November 1st, 1927, to this date, amounting to One Thousand, Seven Hundred and Twenty-Five and 74/100 Dollars a total of Twenty Six Thousand, Nine Hundred and Eighty and 72/100 Dollars together with interest on this sum from this date until paid and also the costs of this cause in this court and in the court below, to be taxed, etc.

[fol. 86] IN SUPREME COURT OF MISSISSIPPI, EN BANC

[Title omitted]

OPINION ON SUGGESTION OF ERROR—Filed Dec. 22, 1928

ANDERSON, J.:

Appellant, the State, on relation of the Attorney General, filed the bill in this case in the Chancery Court of Harrison County against appellee to recover of the latter gasoline excise taxes alleged to be due appellant by appellee for the period between the first day of April, 1926, and the first day of November, 1927, under the provisions of Chapter 119, Laws of 1926, and the statutes of which that Act was amendatory. The case was tried on bill, answer and proof, resulting in a final decree dismissing appellant's bill. From that decree appellant prosecutes this appeal.

Appellee contended, and the Chancellor held, that for the State to impose the excise tax sought to be recovered by the appellant would violate Paragraph 3, Section 8, Article 3, of the Constitution of the United States, which confers on Congress the power to regulate commerce among the several States.

If appellee was due the State any gasoline excise taxes when the bill in this case was filed, it was for gasoline sold by appellee to certain packers of seafood at Biloxi, and by the latter shipped into Louisiana. As to all such gasoline the appellee contends that the contracts of sale and purchase thereof were part of interstate commerce, and, therefore, under the commerce clause of the Federal [fol. 87] Constitution, the State was without power to burden such commerce by imposing excise or privilege taxes thereon. While appellant contends that under the facts of the case, the contracts for the sale and purchase of such gasoline were no part of, and had no relation, whatever, to interstate commerce, and that, therefore, the gasoline sold was taxable under Chapter 119, Laws of 1926, and the statutes of which that Act was amendatory, as if it had been sold in and had never left this state.

There was no conflict in the evidence as to the controlling facts which were as follows: Several packers of seafood, doing business in and near Biloxi, bought large quantities

of shrimp and other seafood from fishermen engaged in fishing therefor out in the marshes near Grants Pass in the State of Louisiana. It was necessary for these fishermen to be supplied with gasoline and other supplies while they were engaged in making their catch. The packers who bought their catch furnished this gasoline and other necessary supplies, to be paid for when their catch was brought in and purchased by the packers. These packers owned boats which plied between Biloxi and Grants Pass. They purchased gasoline from appellee and others and transported it to the fishermen in such boats, which would take the gasoline out into the Louisiana marshes near Grants Pass, and there deliver it to the fishermen to whom it was charged by the packers, and, by the fishermen paid for as stated. On the trial, it was agreed between the parties that the transactions had between appellee and the Gussie Fountaine Packing Company exemplified the manner in which appellee sold and delivered to the packing companies all the gasoline involved in this cause. The Gussie Fontaine Packing Company bought shrimp and, perhaps, other seafood, from fishermen in Louisiana near Grants Pass. The fishermen needed gasoline, and the Packing Company would purchase the required amount [fol. 88] from appellee on open account to be paid for on the first of the succeding month. Appellee would then deliver this gasoline in containers on the wharfs at Biloxi to the Packing Company, where it would be loaded into its own boat and transported to its fishermen. The fishermen came in about every two weeks, and the Packing Company would then have a settlement with them in which they would be charged with the gasoline so delivered to them by the Packing Company, and credited with the amount due them by the Packing Company, for their catch. The boat owned by the Gussie Fontaine Packing Company, the Frank Louis, was not a common carrier of freight, but was used by the Packing Company alone for its own purposes, principally for transporting supplies, including gasoline, to its fishermen between Biloxi and Grants Pass, which boat was registered as a fishing boat. When the Gussie Fontaine Packing Company purchased gasoline from appellee for transportation to Grants Pass for the

purposes named, it executed and delivered to the appellee a receipt or bill of lading as follows:

"No. 4882. Biloxi, Miss., 12/20, 1927.

Received in good order and condition from Superior Oil Company, Biloxi, Miss.,

No. pieces	Description of articles	Weight
2	Drums gasoline.....	.....

Consigned to Gussie Fontaine Pkg. Co. Destination: Grants Pass, La. By boat Frank Louis, owned or operated by Gussie Fontaine Pkg. Co. The Master of said boat, Frank Louis, acknowledges receipt of said goods and agrees to deliver merchandise as consigned in like good order and condition.

[fol. 89] "It is further understood and agreed that the property consigned herein remains the property of the said Superior Oil Company until it shall be delivered to consignee or consignee's agent at point of destination, but that all due caution and carefulness will be exercised by Master and Crew of said Boat Frank Louis to protect said property and effect a safe delivery without undue delay.

"In consideration of the packet rate charged for carrying property described herein the owners of this Boat assume liability for its safe delivery. Should there be damage in loading or unloading, transfers to other vessels or any damages in leakage in transit caused by carelessness or negligence, this damage and loss shall be sustained by owners of boat accepting this shipment.

366-537.

(Signed) Joseph Adams, Master of Boat Frank Louis.

Received $Collect to apply in prepayment of packet charges, on property hereon described from Biloxi, Miss., to Grants Pass, La.

—— ——, for Master of Boat."

Appellee is a corporation located and doing business in Biloxi, Harrison County, Mississippi, selling and distribu-

ting gasoline at Both wholesale and retail. The Gussie Fontaine Packing Company is also a corporation located and doing business in Harrison County, Mississippi.

[fol. 90] It will be seen from what has been stated that the Gussie Fontaine Packing Company purchased its gasoline from appellee to be delivered to it on the wharf at Biloxi, where it was received by the Packing Company's boat, loaded therein, and transported to Grant's Pass, and there sold to the Packing Company's Fishermen. No freight was paid by either the appellee or the Packing Company. There was no depot or station at Grant's Pass, or anywhere else in the Louisiana marshes, to which goods shipped could have been consigned. Grant's Pass was merely a touching point for boats, but was not a place of business for the receipt and distribution of freight. There was no common carrier of freight, either by rail or water, between Biloxi and Grant's Pass.

Putting the facts of the case in a short way;— Appellee, a corporation of this state, doing business at Biloxi, sold the gasoline involved in this case to various packers of seafood also located and doing business at Biloxi, and charged the purchase price to the packers on open account payable at the end of the succeeding month. Under the contracts of purchase, the appellee delivered the gasoline on the wharfs at Biloxi, where it was loaded by the packers into their own boats, and by such boats transported to the fishermen supplying the packers with seafood for packing purposes. The fishermen were plying their avocation in the Louisiana marshes near Grant's Pass. The packers sent the gasoline out there and sold and delivered it to their fishermen who paid for it as stated. In other words, the sales and purchases of the gasoline were between parties doing business in this state, and were negotiated and consummated between them in this State, unless it can be said that the reservation of title to the gasoline in the appellee by the terms of the bills of lading issued by the purchasers until it was delivered at Grant's Pass, changed the transaction from a domestic one to an interstate commerce transaction.

[fol. 91] The question is not whether the gasoline moved in interstate commerce, for there is no dispute about that. It moved from Biloxi, in this State, to a point near Grant's

Pass in Louisiana. And, under the evidence at the time the gasoline was purchased, it was intended by the purchasers for that identical interstate commerce. The question is whether or not the contracts of sale and purchase of gasoline between the appellee and the packers were an integral part of that commerce. We think the solution of this question largely turns upon the effect to be given the reservation of title to the gasoline as set out in the bills of lading therefor issued by the boat master of the packers. It seems clear that the sales and delivery of the gasoline and payment therefor by the purchasers in this state, apart from that provision in the bills of lading, constituted purely domestic transactions, having no relation whatever to interstate commerce. In considering this question, it should be borne in mind that the bills of lading were not issued to appellee by a common carrier, but were issued by the purchasers of the gasoline themselves, the packers, or, to be more specific, by the masters of their boats, which amounted to the same thing.

The title to the gasoline was not reserved in the appellee for the purpose of securing the payment of the purchase price thereof. There is no pretense of that kind on the part of the appellee. Nor was it retained for any other purpose, so far as the record shows, unless it was a means of trying to convert purely domestic transactions into interstate commerce transactions. The packers, as stated, transported the gasoline into Louisiana by means of their own boats, which were not common carriers, and no freight was paid by either the appellee or the packers for such transportation. Under the stipulations in the bills of lading, the packers assumed all responsibility for safe delivery of the gasoline to their fishermen, including all damage thereto in loading and unloading and transferring same, and loss by [fol. 92] leakage in transit. What protection or security did the reservation of title to the gasoline until delivery to the consignee afford appellee? What, if anything, did appellee gain, or what could it have gained by it? We are unable to see any. My Royster, the General Manager of appellee, in effect, confessed, as a witness for his company, that the retention of title in the bills of lading was for the purpose of converting transactions exclusively domestic

in their nature into transactions in interstate commerce. We know of no decision of the Supreme Court of the United States substantially parallel in its facts to this case. But, in numerous decisions by that court, the question involved has been discussed. The solution of this question is easy, where, under the contract of sale, the shipment is delivered to a common carrier for destination in another State. It is much more difficult when the purchaser retains control of the transportation and can change his mind and divert the delivery from an interstate destination to a destination in the state where the shipment originated. The character of shipment depends evidentially on the circumstances. There must be considered what the owner has done in the way of preparation for the journey and in carrying it out. It is true that the mere power of a shipper to divert a shipment already begun does not take it out of interstate commerce, if the other facts show that the journey has already begun in good faith, nor does a temporary interruption of the passage when reasonable and in furtherance of the intended transportation. Hughes v. Minnesota, 272 U. S. 468, 71 L. ed. 259; Champlain Realty Company v. Brattleboro, 260 U. S. 364, 67 L. Ed, 309; Railroad Company v. Mims, 111 Miss. 574, 71 So. 827. In Browning v. Waycross, 233 U. S. 16, 58 L. ed. 829, the court held that the business of erecting lightning rods within the corporate limits of a municipality carried on by an agent of a non [fol. 93] resident manufacturer of such rods in whose behalf the agent had solicited orders for the sale of such rods, and from whom he had received the rods when shipped into the state on such orders, may be subjected to a municipal license without violating the commerce clause of the Federal Constitution, although such contracts bound the seller, at his own expense, to attach them to the houses of the persons who ordered them. The court further held in that case that it was not "within the power of the parties by the form of their contract to convert what was exclusively a local business, subejct to state control, into an interstate commerce business protected by the commerce clause."

We do not think that United States v. Simpson, 252 U. S. 465, 64 L. ed. 665, 10 A. L. R. 510; United States v. Hill, 248 U. S. 420, 63 L. ed. 331, and Kirmeyer v. Kansas, 236 U. S. 568, 59 L. ed. 721, are in point. Those cases simply

hold that intoxicating liquor transported across State lines was interstate commerce, regardless of what the purpose was in so transporting the liquor. That is not the question here. The gasoline involved in this case, immediately after its purchase by the packers, moved in interstate commerce; it was purchased with that intention. Both the seller and the purchaser knew that the gasoline was going to move across the State line into Louisiana. But, what did that have to do with the contracts of sale and the purchase? If the appellee, under the contract, had any real substantial part in the tranportation of the gasoline into Louisiana, that would make them interstate commerce transactions. But, the evidence shows, beyond any doubt, that appellee had no part in the transportation. It simply delivered the gasoline to the packers in this state who took charge of it and transported it into another state. All the appellee has to hang to make interstate commerce transactions out of these sales of gasoline is the stipulation in the bills of lading [fol. 94] providing for the retention of title in appellee until the gasoline should be delivered to the consignee at Grant's Pass, Louisiana, and this stipulation stands right in the face of the undisputed fact that there was no consignee, at or near Grant's Pass. And, furthermore, as shown, the gasoline was delivered by the appellee to the packers on the wharfs at Biloxi in this state, and there the packers, by means of their boats, took charge of it and transported it to Grant's Pass for sale to their fishermen, but that they were under no enforcible obligation to appellee to do so. They were free to transport the gasoline to any other point in or out of this state. The gasoline, in other words, was delivered to the consignees right here in the State, on the wharfs at Biloxi, and, therefore, the provision in the bills of lading, fixing Grant's Pass as the place of delivery, was no more than so much blank space. The packers purchased the gasoline from the appellees in this state, and paid for it. What real concern, therefore, did appellee have as to where the gasoline was to be transported, and by what means? We can see no reason whatever. The contracts of purchase and sale were complete when the gasoline was delivered on the wharfs in this state. No security was demanded by, or given appellee by the packers for payment of the purchase price. Under the

provisions of the bills of lading, the entire risk of loss in transportation was assumed by the packers, and if that had not been done, it seems that any loss in transit would have fallen on the packers because the gasoline was being carried in their own boats.

We cannot give our assent to the proposition that the bare fact that the appellee and the packers went through the form in the bills of lading of providing that the title to the gasoline should remain in appellee until delivered to the [fol. 95] consignee at Grant's Pass, made the contracts of sale and purchase of the gasoline interstate commerce transactions. We think there is little substance in that position. It is too shadowy. It is without sound reason.

It follows from these views that the Suggestion of Error should be sustained, and the judgment heretofore rendered in this case by this court set aside, and that this court should now render the judgment that the court below should have rendered, which is that the appellant recover of the appellee the sum of $25.254.98, with six per cent interest from November 1st, 1927, representing the amount shown by the evidence to be due by the appellee to the State for the taxes sued for. Reversed and Suggestion of Error sustained; former judgment in this case set aside; decree of court below reversed, and decree here for appellant.

Suggestion of error sustained, and reversed and judgment here for appellant.

Cook and Ethridge, J. J., dissenting.

[File endorsement omitted.]

[fol. 96] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

DISSENTING OPINION—Filed Dec. 22, 1928

ETHRIDGE, J., dissenting:

After a protracted consideration, involving the re-examination of the authorities, I am unable to concur in the views of the prevailing opinion. I could well stand upon the original opinion written herein, but there are authorities which were not commented upon in that opinion, which

lend great strength to the views expressed in the original opinion.

The evidence in the case shows conclusively that the articles were purchased from the Superior Oil Company, to be sent into Louisiana. It was distinctly understood by the buyer and the seller that the articles were to be sent beyond the boundaries of Mississippi, and were not to be consumed in Mississippi. Every citizen in this state, as well as in others, has the right to engage in interstate commerce, and to procure for himself any advantage that may flow from so engaging in such commerce.

The tax here sought to be collected by the state is an excise tax, laid upon the right to exercise the business here involved. The state has no power whatever to tax this right, or to put any restrictions upon it. However, the evidence shows conclusively, I think, that the transaction was not one to evade the state law, but was one of practical necessity to the business of the appellee, the defendant below. The manager of the Superior Oil Company testified that that company was engaged in both intrastate and interstate commerce, and that the interstate commerce constituted a material portion of their business; that that [fol. 97] company sold locally in Mississippi, and transported oil and gas to Alabama, and there resold it, but did not personally go into the state of Louisiana to do business, and had no domicile or location in that state.

Among other things Mr. Royster, the manager, testified:

"At the time we went into this, there was one factory bought a load of 100 barrels of gasoline, shipped from Louisiana into Biloxi, and the price was four or five cents a gallon cheaper that what we could sell for, and pay the tax. We saw it would make big inroads into our business, and in fact we could not maintain if that kept up, and we made inquiries from our attorney and I think our attorney got advice from the Attorney General that we were in our rights to ship out of the state to meet this competition. By shipping into Louisiana we met Louisiana competition.

"Q. There was competition in Louisiana?

"A. Yes.

• • • • • • •

"A. The prices fluctuate in Louisiana, and also in Mississippi. There are times when it could be bought for four cents a gallon less and times six cents less than we could sell it for with our tax.

"Q. Were people in Louisiana competing with you for this business at Grant's Pass?

"A. Yes.

"Q. Were they able to make deliveries at Grant's Pass.

"A. Yes, and were making delivery out into the marsh, would send freight boats out loaded and are doing it now and are factors in it big.

"Q. Could you have sold gasoline that was in Biloxi, except with agreement to deliver it at Grant's Pass.

[fol. 98] "A. No.

"Q. Is that the understanding?

"A. We agreed if they gave us the whole business, we would deliver it to them according to the understanding that we had with our attorney and the Attorney General we were within the law to do that, we then agreed to keep them supplied with shipments of gasoline at the price, to Louisiana, less the tax."

It will thus be seen that it was a practical necessity for the defendant to engage in interstate commerce to successfully carry on the business against competition already existing. The contract of shipment, or receipt or bill of lading—whatever it may be called—set forth in the prevailing opinion, is clearly a contract for interstate shipment of goods or property. In that contract, to make sure that the gasoline would be delivered in Louisiana, and not used or sold in the state of Mississippi, it was provided:

"It is further understood and agreed that the property consigned herein remains the property of the said Superior Oil Company until it shall be delivered to consignee or consignee's agent at point of destination."

It is perfectly legitimate to so provide in the contract. One of the liberties of a citizen is the right to make necessary contracts with reference to his business, when it may be necessary or appropriate to enjoy his right or liberty. Allgeyer vs. La., 165 U. S. 578, 17 Sup. Ct. Rep. 427, 41, U. S. L. Ed. 832.

The appellant plants itself upon the proposition that the contract was completely performed when the gasoline was delivered at the wharf to the boat owned by the purchaser of the gasoline, although the gasoline as purchased for the express purpose of being shipped into Louisiana, and despite the fact that title was reserved in the seller until it reached that point.

[fol. 99] In Dahnke-Walker Milling Co. v. C. T. Bondurant, 257 U. S. 282, 66 L. ed. 239, the court expressly held that where goods are purchased in one state for transportation to another, the purchase is interstate commerce, quite as much as the transportation. In the opinion (257 U. S. 290, L. ed. 243) the court said:

"The commerce clause of the constitution, art. 1, sec. 8, cl. 3, expressly commits to Congress and impliedly withholds from the several states the power to regulate commerce among the latter. Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. Where goods in one state are transported into another for purposes of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination, and while they are in the original packages. Brown v. Maryland, 12 Wheat. 419, 446, 447, 6 L. ed. 678, 688, 689; American Steel & Wire Co. v. Speed, 192 U. S. 500, 519, 48 L. ed., 538, 546, 24 Sup. Ct. Rep. 365. On the same principle, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as it does the transportation. American Exp. Co. v. Iowa, 196 U. S. 133, 143, 49 L. ed. 417, 422, 25 Sup. Ct. Rep. 182. This has been recognized in many decisions construing the commerce clause. Thus it was said in Welton v. Missouri, 91 U. S. 275, 280, 23 L. ed. 347, 349: 'Commerce' is a term of the largest import. It comprehends intercourse for the purposes of trade in [fol. 100] any and all its forms, including the transportation, purchase, sale and exchange of commodities: In Kidd v. Pearson, 128 U. S. 1, 20, 32 L. ed. 346, 350, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6, it was tersely said: 'Buying and selling and the transportation incidental thereto con-

stitute commerce.' In U. S. v. E. C. Knight Co., 156 U. S., 1, 13, 39 L. ed. 325, 329, 15 Sup. Ct. Rep. 249, 'contracts to buy, sell or exchange goods to be transported among the several states' were declared 'part of interstate trade or commerce.' And in Addyston Pipe and Steel Co. v. U. S. 175 U. S. 211, 241, 44 L. ed. 136, 147, 20 Sup. Ct. Rep. 96, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities.' In no case has the court made any distinction between buying and selling, or between buying for transportation to another state and transporting for sale in another state. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling, it was not material whether it came first or last."

See, also, United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 66 L. ed. 234, 42 Sup. Ct. Rep. 105; Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 66 L. ed. 227, Lemke v. Farmers' Grain Co. 258 U. S. 50, 42 Sup. Ct. Rep. 244, 66 L. ed. 458; Hump Hairpin Mfg. Co. v. Emmerson, 258 U. S. 290, 42 Sup. Ct. Rep. 305; Shafer vs. Farmers' Grain Co. 268 U. S. 189, 45 Sup. Ct. 481, 69 L. ed. 909; Pa. R. Co. v. Sonman S. C. Co. 242 U. S. 120, 37 Sup. Ct. 46, 61 L. ed. 189, Binderup [fol. 101] v. Pathe Exchange, 263 U. S. 291, 44 Sup. Ct. 96, 68 L. ed. 308. In the cases where the goods were f. o. b. cars at place of shipment to be sent into other states was a delivery to consignee at that place. The carrier was the agent of consignee.

It seems to me that the cases cited in the original opinion show beyond question that the instrumentality by which property is conveyed from one state to another does not make any difference, and does not change interstate transportation to intrastate transportation. In U. S. v. Simpson, 252 U. S. 465, 64 L. ed. 665, 35 Sup. Ct. Rep. 364, 10 A. L. R. 510, was a case where the jurisdiction of Congress over the transaction depended upon the interstate commerce power, and the intoxicating liquor in that case was transported in the automobile of the defendant buying the intoxicating

liquor for his personal use, and it was there judged to be interstate commerce.

In U. S. v. Hill, 248, 420, 63 L. ed. 337, 39 Sup. Ct. 143 the liquor was carried on the person of the defendant from the state of Kentucky into the state of West Virginia, and was intended for personal use, and not for sale, and it was there held to be interstate commerce.

In the *state* of Kirmeyer v. Kansas, 236 U. S. 5, 59 L. Ed. 721, 35 Sup. Ct. 419, Kirmeyer, who lived in Leavenworth, Kansas, operated a liquor business just over the river on the Missouri side, and receiving orders from Leavenworth over the telephone, placed the liquor in his own vehicle, carried it across the river, and there delivered it, was held to be interstate commerce, and the motives were held to be immaterial in that case, although it was adjudged by the state court that the method of conducting the business was a mere sham and fraud upon the state of Kansas, to enable the defendant to carry on a- -legal business in the state of Kansas, in disregard of its laws prohibiting such business. [fol. 102] In what is known as the 'white slave' cases, the jurisdiction in the federal government over the offence depended upon the commerce clause of the Federal Constitution. By the act of June 25, 1910, 36 Stat. at Large 825, chap. 395, U. S. C. title 18, section 397, it was made a criminal offense against the federal government to transport women or girls in interstate commerce for immoral purposes. The statute was upheld as constitutional in Hoke v. U. S. 227, U. S. 308, 33 Sup. Ct. 281, 57 L. ed. 523, Ahtanasaw v. U. S. 227, U. S. 326, 33 Sup. Ct. 285, 57 L. ed. 528, Bennett v. U. S. 227, U. S. 333, 33 Sup. Ct. 288, 57 L. ed. 531, Harris v. U. S. 227 U. S. 340, 33 Sup. Ct. 289.

In Caminetti v. U. S. 242, U. S. 470, 37 Sup. Ct. 192, 61 L. ed. 442, it was held to be immaterial, in the transportation of the woman in question, that there was no expectation of pecuniary gain, and that the woman was so transported for the purpose only of being the mistress or concubine of the defendant.

See, also, authorities in the case notes to U. S. vs. Simpson, in 10 A. L. R. at page 512; citing U. S. vs. Burch, 226 Fed. 974, where it was held that the transportation of a woman by automobile from one state to another for any

unlawful purpose was interstate commerce. In this opinion, the court said:

"And the transportation of persons has long been held to be commerce. Interstate commerce then is, among other things, the passage of persons and property from one state to another. It does not necessarily, or indeed at all, involve the idea of a common carrier or the payment of freight or fare. Interstate commerce being, therefore, in so far as applicable here, the passage of persons from one state to another, the declaration of the act 'that any person who shall transport any woman in interstate commerce', is equiv- [fol. 103] alent to the declaration 'that any person who shall transport any woman from one state to another.' It was any transportation from state to state, for the purposes mentioned, that Congress intended to prohibit, and did prohibit, and not such transportation by common carrier alone. In these days it is just as easy to transport a woman or girl by automobile as by rail, and the former method may, in many cases, be much more expeditious and clandestine than the latter."

In the case at bar there is no dispute whatever that each and all of the shipments were actually carried from Biloxi to Grants Pass, Louisiana in the original package, and there resold by the consignee to fishing boats operating in the Louisiana marshes. It seems to me so clear that the transaction here involved is interstate commerce, that it is difficult to appreciate the contrary view. The only authority, as I understand the prevailing opinion, relied upon by the majority of the court, is Browning v. Waycross, 233 U. S. 16, 58 L. ed. 829. With due deference to my learned associates, I think that case supports my view, rather than the view of the majority of the court. At pages 19 and 20, 233 U. S. page 831, 58 L. ed. the court said:

"The general principles by which it has been so frequently determined that a state may not burden by taxation or otherwise the taking of orders in one state for goods to be shipped from another, or the shipment of such goods in the channels of interstate commerce *up to and including the consummation by delivery of the goods at the point of shipment* have been so often stated as to cause them to be elementary, and as to now require nothing but a mere outline of the principle." (Italics ours.)

In that case the goods had been shipped and delivered to [fol. 104] the purchaser, but the contract called for in addition to the delivery of the goods at destination, that the seller would place the rods upon the building which they were purchased to serve, and the question is not whether the transportation from the buyer to the seller was interstate commerce, but whether the business of erecting the rods or attaching them to the building was a local business. The court held that it was not an interstate commerce transaction to engage in the business of putting the rods upon the building. Of course, the erecting of buildings, and the placing of fixtures on them, is not a part of interstate commerce, as it is entirely severable and separate therefrom, and becomes a business or occupation.

It seems to me that there is no case at all which supports the prevailing opinion, when the facts established by this record are considered as being in good faith. There is nothing whatever, as I see the record, that establishes, or even tends to establish, bad faith of the parties to the contract, if that is indeed material at all. Contracts are presumed to be legal and valid, and to be entered into honestly, and for the purpose of legitimate business or uses.

[File endorsement omitted.]

[fol. 105] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL

To the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi and the Presiding Judge thereof:

Your petitioner, the Superior Oil Company, a corporation organized under the laws of the State of Mississippi, and domiciled at Biloxi, Harrison County, Mississippi, defendant in the court below and appellee in this Court, in this its petition for an appeal from final judgment rendered against it by the Supreme Court of the State of Mississippi, respectfully shows unto the Court that upon the 22nd day

of December, 1928, there was rendered against the petitioner a judgment or decree by the Supreme Court of the State of Mississippi, in the sum of Twenty Six Thousand, Nine Hundred Eighty and 72/100 Dollars ($26,980.72) with interest from said date and all costs of court to be taxed; that said judgment rendered by this court against the petitioner is now a final judgment in the Supreme Court of the State of Mississippi, and that the said Supreme Court of the State of Mississippi is the highest court in said State in which a decision in said cause may be rendered; that the Supreme Court of the State of Mississippi is the highest [fol. 106] court of appellate jurisdiction in the State of Mississippi.

Petitioner shows unto the Court that in said suit the petitioner, by its answer in the court below, in its briefs and oral arguments before this court, brought in question the validity of sections 1, 2, and 3, chapter 119 Mississippi Laws 1926, being an amendment of Chapter 115 Mississippi Laws 1924, as being in conflict with and violation of the Constitution of the United States, in that the petitioner and appellee claimed, alleged and asserted in the chancery court of Harrison County, Mississippi, where said cause was originally instituted, and before this court that said Statutes of the State of Mississippi violated clause 3, paragraph 8, Article One of the Constitution of the United States conferring upon the Congress of the United States the sole and exclusive right to regulate commerce among the states, said clause being known as the Commerce Clause of the Constitution of the United States. The decision of the Supreme Court of the State of Mississippi by its said judgment heretofore referred to, rendered upon the 22nd day of December, 1928, was in favor of the validity of the said statutes of the State of Mississippi hereinbefore referred to, and the Supreme Court of the State of Mississippi, by its said judgment or decree, applied and enforced said statutes against this petitioner in said final judgment over the assertion and claim of petitioner that said laws of the State of Mississippi, if so construed and applied, violated the commerce clause of the Constitution of the United States hereinbefore set out.

Your petitioner shows unto the court that in the rendition of said final judgment against said petitioner, certain errors were committed, to the prejudice of your petitioner,

[fol. 107] all of which in detail appear in the assignment of errors herewith filed in this cause.

Wherefore your petitioner feels aggrieved by the final decision and judgment of the Supreme Court of the State of Mississippi, and prays for the allowance of an appeal from the judgment of the Supreme Court of the State of Mississippi as now allowed by law, for the correction therein of the errors complained of, and your petitioner presents herewith an assignment of errors to be presented and argued in the Supreme Court of the United States, and plaintiff in error tenders herewith its formal and duly executed bond, with good and sufficient sureties joining in the execution of said bond, said bond being conditioned according to law, and your petitioner prays the approval of said bond; and that a transcript of the pleas and proceedings therein, duly authenticated, may be forthwith, in accordance with law, sent to the Supreme Court of the United States. Notice thereof has been duly served on Rush H. Knox, Attorney General of the State of Mississippi.

And as in duty bound your petitioner will ever pray.

This the 2nd day of January, 1929.

W. Lee Guice, Wm. H. Watkins, Attorneys for Petitioner, Superior Oil Company.

Notice of foregoing petition for appeal acknowledged.

Rush H. Knox, Attorney General of the State of Mississippi.

[fols. 108-110] Bond on appeal for $35,000 approved; omitted in printing.

[fol. 111] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING APPEAL AND APPROVING BOND

The above entitled matter coming on for hearing upon the petition of Superior Oil Company, for an appeal from final judgment of the Supreme Court of the State of Missis-

sippi, and upon examination of the said petition and the record in said matter, and desiring to give the petitioner opportunity to present in the Supreme Court of the United States the questions presented by the record in the said matter, therefore, it is

Ordered that an appeal with supersedeas from the judgment of the Supreme Court of the State of Mississippi be and is hereby allowed petitioner as allowed by law, and that the appeal bond presented by said petitioner for $35,000.00 be and the same is hereby approved.

This the 8*nd* day of January, 1929.

Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi.

[fol. 112] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS

Plaintiff in error, Superior Oil Company (appellee in the Supreme Court of the State of Mississippi) a corporation chartered and organized under the laws of the state of Mississippi, would show unto the court in this assignment of error, that there was manifest error prejudicial to it apparent of record in the proceedings, decision and final judgment in the Supreme Court of the State of Mississippi, in the above entitled matter, in this, to wit:

First. The Supreme Court of the state of Mississippi committed error in rendering the final judgment or decree against plaintiff in error, Superior Oil Company, upon the 22nd day of December, 1928, in the abo*f*e entitled cause.

Second. The Supreme court of the state of Mississippi committed error in failing and refusing to affirm the judgment or decree rendered in favor of plaintiff in error herein by the Chancery Court of Harrison county, Mississippi, in said cause.

Third. The Supreme Court of the State of Mississippi committed error in holding that sections 1, 2 and 3, Chapter 119 Mississippi Laws 1926, being an amendment to Chap.

115 Mississippi Laws 1924, were not contrary to and violative of Clause 3, paragraph 8, Art. 1 of the Constitution of the United States, known as the Commerce Clause.

Fourth. The Supreme Court of the State of Mississippi committed error in holding valid and enforcing against plaintiff in error (appellee before the supreme court of the state of Mississippi) Sections 1, 2 and 3 Chap. 119 Mississippi Laws 1926, being an amendment of Chap. 115 Mississippi Laws 1924.

[fol. 113] Fifth. The Supreme Court of the State of Mississippi committed error in so construing Sections 1, 2 and 3, Mississippi Laws of 1926, Chapter 119, being an amendment of Chapter 115, Mississippi Laws of 1924, as to make same applicable to the sales of gasoline made by the Superior Oil Company, plaintiff in error in this cause.

Sixth. The Supreme Court of the State of Mississippi committed error by its judgment or decree against the Superior Oil Company, plaintiff in error herein, in holding that the sales of gasoline in said cause made by the Superior Oil Company are intrastate commerce, and that the Superior Oil Company, plaintiff in error herein, was liable for the gallonage tax therefor provided by Chapter 119, Mississippi Laws of 1926.

Seventh. The Supreme Court of the State of Mississippi committed error in failing and refusing to hold that the sales of gasoline made by the Superior Oil Company, plaintiff in error, were made in interstate commerce.

Eighth. The Supreme Court of the State of Mississippi committed error in sustaining the suggestion of error filed by the appellant, Rush H. Knox, Attorney General of the State of Mississippi, and in setting aside the order of affirmance originally entered.

Ninth. The Supreme Court of the State of Mississippi committed error in failing and refusing to overrule the suggestion of error filed by the appellant, State of Mississippi.

Tenth. For other reasons apparent.

William H. Watkins, W. Lee Guice, Attorneys for Superior Oil Company, Appellee and Plaintiff in Error.

[fol. 114] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

WRIT

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Mississippi, Greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea which is in the State Supreme Court of the State of Mississippi, before you, or some of you, being the highest Court of law or equity of the said State, in which a decision could be had in said State between Superior Oil Company, plaintiff in error, appellant (appellee before the supreme court of the state of Mississippi) and the State of Mississippi, Ex Rel. Rush H. Knox, Attorney-General, defendant in error, appellee (appellant before the supreme court of the state of Mississippi), wherein was drawn in question the validity of statutes of the state of Mississippi, on the ground of their being repugnant to the constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Superior Oil Company, as by its complaint appears.

Wherefore, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, we do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this [fol. 115] writ, so that you have the same in our said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this the 8th day of January,

1929. Done in the City of Jackson, County of Hinds, with the seal of the District Court of the United States for the Southern District of Mississippi, Jackson Division attached.

B. L. Todd, Jr., Clerk of the District Court of the United States for the Southern District of Mississippi, Jackson Division. (Seal U. S. District Court, Southern District of Mississippi.)

Allowed by Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi.

Formal service of foregoing writ saved and service accepted this January 8th, 1929.

Rush H. Knox, Attorney-General of the State of Mississippi, by James W. Cassedy, Jr., Special Agent.

[fols. 116 & 116½] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 9, 1929

The Clerk of the Supreme Court of the State of Mississippi, in preparing and transmitting the record in the above-entitled cause to the Supreme Court of the United States, will include in the record the following:

(1) Original bill of complaint.

(2) Answer of the Superior Oil Company with exhibits thereto.

(3) Amendment to answer.

(4) Agreement dictated by Mr. Sharp, Tr. 37, and the total out of state deliveries shown in each monthly report of sales, Tr. 37-147.

(5) All the testimony in the case, including agreement of counsel, Tr. 147-174, each inclusive.

(6) Final decree, Tr. 176.

(7) Order affirming decree rendered by the Supreme Court of the State of Mississippi.

(8) Order of the Supreme Court of the State of Mississippi sustaining suggestion of error.

(9) Original opinion, Judge Ethridge affirming cause; opinion of Judge Anderson sustaining suggestion of error; dissenting opinion of Judge Ethridge.

W. H. Watkins, Wm. Lee Guice, Attorneys for Superior Oil Company, Plaintiff in Error.

Service of the foregoing præcipe acknowledged.
Rush H. Knox, Attorney General of the State of Mississippi, by James W. Cassedy, Jr., Special Agent.

[File endorsement omitted.]

[fol. 117] Clerk' certificate to foregoing transcript omitted in printing.

[fols. 118 & 119] Citation in usual form, showing service on Rush H. Knox, omitted in printing.

[fol. 120] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

Stipulation and Addition to Record—Filed in U. S. Supreme Court Feb. 11, 1929

SUPPLEMENTAL SPECIFICATIONS AS TO MATTER TO BE INCLUDED IN THE RECORD

The clerk of the court will include in the record in the Supreme Court of the United States in the above-entitled cause:

(1) Amendment to assignment of error.

(2) Agreement of counsel in respect thereto.

(Signed) W. H. Watkins, Attorneys for the Appellant.

Service acknowledged by copy.

(Signed) Rush H. Knox, Attorney General of the State of Mississippi, by James W. Cassedy, Jr., Special Agent.

[fol. 121] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

STIPULATION—Filed Feb. 1, 1929

It is agreed that the petition for appeal filed by the Superior Oil Company in this case may be treated as having been amended so as to include the objection of appellant, Superior Oil Company, to Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924, which were for the months of January, February and March, 1926, involved in the controversy, and were attacked by the Superior Oil Company as violating the Commerce Clause of the Constitution of the United States. Reference to said Act of 1924 having been inadvertently omitted in the petition for appeal, and it is consented that the Superior Oil Company may file an amendment to its assignment of error, including therein its attack upon said Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924.

(Signed) Rush H. Knox, Attorney General of the State of Mississippi, by James W. Cassedy, Jr., Special Agent. Wm. H. Watkins, W. Lee Guice, Attorneys for the Superior Oil Company.

[fol. 122] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

AMENDMENT TO ASSIGNMENT OF ERRORS—Filed Feb. 1, 1929

Plaintiff in error, Superior Oil Company (appellees in the Supreme Court of the State of Mississippi), a corpora-

tion chartered and organized under the laws of the State of Mississippi, would show unto the Court in this amendment to assignment of error, that there was manifest error prejudicial to it apparent of record in the proceedings, decision and final judgment in the Supreme Court of the State of Mississippi, in the above-entitled matter, in this, to-wit:

First. The Supreme Court of the State of Mississippi committed error in rendering the final judgment or decree against plaintiff in error, Superior Oil Company, upon the 22nd day of December, 1928, in the above-entitled cause.

Second. The Supreme Court of the State of Mississippi committed error in failing and refusing to affirm the judgment or decree rendered in favor of plaintiff in error herein by the Chancery Court of Harrison County, Mississippi, in said cause:

Third. The Supreme Court of the State of Mississippi committed error in holding that Sections 1, 2 and 3, Chapter 119, Mississippi Laws of 1926, being an amendment to Chapter 115, Mississippi Laws of 1924, and Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924, were not contrary to and violative of Clause 3, Paragraph 8, Article 1 of the Constitution of the United States, known as the Commerce Clause.

Fourth. The Supreme Court of the State of Mississippi committed error in holding valid and enforcing against [fol. 123] plaintiff in error (appellee before the Supreme Court of the State of Mississippi) Sections 1, 2 and 3, Chapter 119, Mississippi Laws of 1926, being an amendment to Chapter 115, Mississippi Laws of 1924, and Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924.

Fifth. The Supreme Court of the State of Mississippi committed error in so construing Sections 1, 2 and 3, Chapter 119, Mississippi Laws of 1926, being an amendment to Chapter 115, Mississippi Laws of 1924, and Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924, as to make same applicable to the sales of gasoline made by the Superior Oil Company, plaintiff in error in this case.

Sixth. The Supreme Court of the State of Mississippi committed error by its judgment or decree against the Su-

perior Oil Company, plaintiff in error herein, in holding that the sales of gasoline in said cause made by the Superior Oil Company are intrastate commerce, and that the Superior Oil Company, plaintiff in error herein, was liable for the gallonage tax therefore provided by Chapter 119, Mississippi Laws of 1926, and Chapter 115, Mississippi Laws of 1924.

Seventh. The Supreme Court of the state of Mississippi committed error in failing and refusing to hold that the sales of *t*asoline made by the Superior Oil Company, plaintiff in error, were made in interstate commerce.

Eighth. The Supreme Court of the State of Mississippi committed error in sustaining the suggestion of error filed by the appellant, Rush H. Knox, Attorney General of the State of Mississippi, and in setting aside the order of affirmance originally entered.

Ninth. The Supreme Court of the State of Mississippi committed error in failing and refusing to overrule the suggestion of error filed by the appellant, State of Mississippi.

Tenth. For other reasons apparent.

(Signed) Wm. H. Watkins, W. Lee Guice, Attorneys for Superior Oil Company, Appellee and Plaintiff in Error.

[File endorsement omitted.]

[fol. 124] Clerk's certificate to foregoing papers omitted in printing.

[fol. 124½] [File endorsement omitted.]

[fol. 125] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON BY PLAINTIFF IN ERROR AND DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—Filed Jan. 28, 1929

The Superior Oil Company, appellant in the above-entitled cause, in order to secure a reversal of the judgment appealed from, will rely upon the following points:

(1) That the sales of gasoline made by the Superior Oil Company, Plaintiff in Error, for which tax was recovered in this case, were made in interstate commerce, and Plaintiff in Error was not liable for the tax thereupon.

(2) That Sections 1, 2 and 3, Chapter 119, Mississippi Laws of 1926, being an amendment to Chapter 115, Mississippi Laws of 1924, and Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924, as construed and enforced by the Supreme Court of the State of Mississippi in the final judgment appealed from against the Plaintiff in Error, violate Clause 3, Paragraph 8, Article 1, of the Constitution of the United States, conferring upon the Congress of the United States the sole and exclusive right to regulate commerce among the States, said clause being known as the Commerce Clause of the Constitution of the United States.

(3) The excise law, imposed Chapter 119, Mississippi Laws of 1926, being an amendment to Chapter 115, Mississippi Laws of 1924, and Sections 1, 2 and 3, Chapter 115, Mississippi Laws of 1924, can not, under the Commerce Clause of the Constitution of the United States, be made applicable to the sales of gasoline made by the Plaintiff in Error, for which the tax was recovered against the Plaintiff in Error in this case in the final judgment of the Supreme Court of the State of Mississippi appealed from.

(4) Other points to be presented at the hearing.

[fol. 126] Designation of Portions of the Record to be Printed

The Clerk of this Court will print the entire record in the above-entitled cause transmitted from the Supreme Court of the State of Mississippi.

W. H. Watkins, W. Lee Guice, Attorneys for the Plaintiff in Error.

We, the undersigned attorneys for the appellee, consent to the foregoing designation of the parts of the record to to be printed.

E. C. Sharp, James W. Cassedy, Jr., Attorneys for the Appellee.

[fol. 127] [File endorsement omitted.]

Endorsed on cover: File No. 33,951. Mississippi Supreme Court. Term No. 642. Superior Oil Company, appellant, vs. The State of Mississippi ex rel. Rush H. Knox, Attorney General. Filed January 21st, 1929. File No. 33,951.